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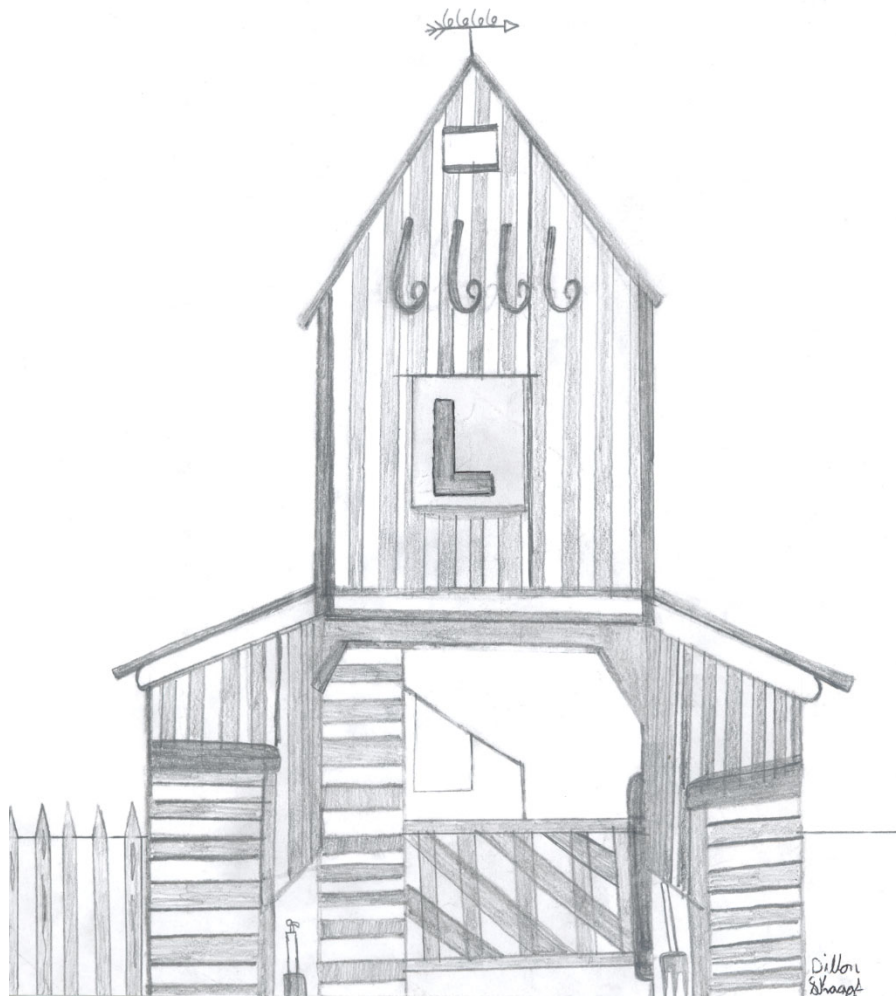
# TEXAS REGISTER

*Volume 44 Number 39*

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*Pages 5449 - 5678*

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

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# TEXAS REGISTER

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# THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

**RQ-0304-KP**

**Requestor:**

The Honorable Isidro R. Alaniz

District Attorney

49th Judicial District

Post Office Box 1343

Laredo, Texas 78042

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether a school district may purchase real property outside its boundaries for the purpose of constructing and operating a school (RQ-0304-KP)

**Briefs requested by October 10, 2019**

**RQ-0305-KP**

**Requestor:**

The Honorable Lisa L. Peterson

Nolan County Attorney

100 East 3rd Street, Suite 106A

Sweetwater, Texas 79556

Re: Authority to establish salaries of the staff of a multicounty court at law (RQ-0305-KP)

**Briefs requested by October 11, 2019**

**RQ-0306-KP**

**Requestor:**

The Honorable Rodney W. Anderson

Brazos County Attorney

300 East 26th Street, Suite 1300

Bryan, Texas 77803-5359

Re: Whether the Texas Pawnshop Act preempts municipal regulation of dealers in secondhand personal property who also transact business as a pawnshop (RQ-0306-KP)

**Briefs requested by October 14, 2019**

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

TRD-201903323

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: September 16, 2019



Opinions

**Opinion No. KP-0267**

The Honorable James White

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Protections against excessive fines under the U.S. and Texas Constitutions (RQ-0277-KP)

## S U M M A R Y

Courts following U.S. Supreme Court precedent would conclude that the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment protection against excessive fines.

Courts recognize article I, section 13 of the Texas Constitution as a constitutional protection against excessive fines. A court would not enforce an unconstitutionally excessive fine. Depending on the statute, a Texas court would be obligated to follow Texas law that requires it to separate the unconstitutional fine and uphold the portion of the statute that is constitutional, if possible.

A Texas court would likely conclude that the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution is binding on the State, and federal jurisprudence is instructive about, if not determinative of, excessive fines issues under article I, section 13 of the Texas Constitution.

**Opinion No. KP-0268**

Dr. Austin A. Lane  
President  
Texas Southern University  
3100 Cleburne Street  
Houston, Texas 77004

Re: Payment for unused vacation leave after employee separation (RQ-0279-KP)

**S U M M A R Y**

Government Code subsection 661.063(b) provides that vacation leave pay for an employee who separates from state employment while holding a position that does not accrue vacation time is computed using the "employee's final rate of compensation in the last position held that accrues vacation." In the hypothetical scenario you describe, the administrative position is the last position held that accrues vacation, so the compensation used for the calculation for payment of vacation leave is only the compensation paid for the administrative position.

Subsection 661.062(b)(5) entitles an employee to payment for vacation leave upon the occurrence of the described change in employment circumstances and "if the agency agrees to pay the employee for the accrued balance of the employee's vacation time." Thus, the entitlement arises on the fulfillment of both prerequisites, which will depend on particular facts.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201903324

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: September 16, 2019





# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request/Question

Whether a city employee violates section 255.003(a) of the Election Code in the following circumstances: 1) by allowing political advertising materials to be displayed or distributed at a city-owned facility during or in connection with a candidate debate or forum, 2) if political advertising materials are displayed or distributed inside a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum, or 3) if political advertising materials are displayed or distributed in a corridor outside the room rented to the debate sponsor or in the parking lot of the city-owned building where the candidate debate or forum is being conducted. (AOR-629)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on September 17, 2019.

TRD-201903345  
Ian Steusloff  
General Counsel  
Texas Ethics Commission  
Filed: September 17, 2019



## Advisory Opinion Request/Question

Advisory Opinion Request/Question: Whether an elected officeholder, who is a member of a political committee, may accept transportation, lodging, and meals, or reimbursement of expenses for the same, during a regular legislative session from the committee for attending and performing official actions at the committee's meetings. (AOR-630)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on September 17, 2019.

TRD-201903346  
Ian Steusloff  
General Counsel  
Texas Ethics Commission  
Filed: September 17, 2019



## Advisory Opinion Request/Question

Whether section 572.069 of the Government Code would prohibit a former employee of a state agency from accepting employment from a person whose bid proposal the employee reviewed when the person was not eligible to enter into a contract with the agency. (AOR-631)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on September 17, 2019.

TRD-201903347  
Ian Steusloff  
General Counsel  
Texas Ethics Commission  
Filed: September 17, 2019



## Advisory Opinion Request - Self Proposed

Whether an expenditure made through a periodic bill for the placement of Internet political advertising, the amount of which is based on the number of views or clicks the Internet advertising receives during the billing period, is the equivalent, for reporting purposes, of a periodic electricity bill where the total cost is not known until the end of the billing cycle. (SP-17)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.



TRD-201903344

Ian Steusloff

General Counsel

Texas Ethics Commission

Filed: September 17, 2019

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

##### 22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) adopts on an emergency basis amendments to 22 TAC §153.19, Licensing for Persons with Criminal History and Moral Character Determination, in Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act.

The amendments are adopted on an emergency basis to implement statutory changes enacted by the 86th Legislature in HB 1342, which takes effect on September 1, 2019, and SB 1217, which took effect on June 14, 2019.

The amendments are adopted on an emergency basis under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses, and changes enacted by the 86th Legislature in HB 1342 and SB 1217.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

*§153.19. Licensing for Persons with Criminal History and Fitness [Moral Character] Determination.*

(a) No currently incarcerated individual is eligible to obtain or renew a license. A person's license will be revoked upon the person's incarceration [~~imprisonment~~] following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

(b) The Board may suspend or revoke an existing valid license, disqualify an individual from receiving a license, deny to a person the opportunity to be examined for a license or deny any application for a license, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked, or had their mandatory supervision revoked. Any such action may be taken [shall be made] after consideration of the required factors [~~detailed~~] in Chapter 53, [Texas] Occupations Code, [§53.022] and [subsection (d) of] this section.

(c) A license holder must conduct himself or herself with honesty, integrity, and trustworthiness. After considering the required factors in Chapter 53, Occupations Code, [~~Thus,~~] the Board determines that a conviction or deferred adjudication deemed a conviction under Chapter 53, Occupations Code, of [~~has considered the factors in Texas Occupations Code §53.022 and deems~~] the following crimes to be di-

rectly related to the duties and responsibilities of a certified general or certified residential [~~occupation of~~] appraiser, a licensed appraiser or appraiser trainee:

(1) offenses involving fraud or misrepresentation;

(2) offenses against real or personal property belonging to another[, if committed knowingly or intentionally];

(3) offenses against public administration, including tampering with a government record, witness tampering, perjury, bribery, and corruption;

(4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law; and

~~[(5) offenses involving moral turpitude; and]~~

(5) [~~(6)~~] offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining whether a conviction of a criminal offense not listed in subsection (a) of this section directly relates to the duties and responsibilities of a licensed occupation regulated by the Board, the Board considers:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(e) [~~(d)~~] When [~~It~~] determining the present fitness of an applicant or license holder who has been convicted of a crime, the Board also considers [~~will consider the following evidence~~]:

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

(2) the person's age at the time the crime was committed [~~of the commission of the crime~~];

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

(4) the person's conduct and work activity before and after [~~prior to and following~~] the criminal activity;

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

(6) ~~[(5)]~~ evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(7) ~~[(6)]~~ other evidence of the applicant's or license holder's present fitness including letters of recommendation. ~~[from:]~~

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

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

~~[(C) any other person in contact with the applicant or license holder.]~~

~~[(e) It shall be the responsibility of the applicant or license holder to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has supported his or her dependents and otherwise maintained a record of good conduct, and is current on the payment of all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the person has been convicted.]~~

(f) To the extent possible, it is the applicant's or license holder's responsibility to obtain and provide the recommendations described in subsection (e)(7) of this section.

(g) When determining a person's fitness to perform the duties and discharge the responsibilities of a licensed occupation regulated by

the Board, the Board does not consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

(h) ~~[(f)]~~Fitness ~~[Moral Character]~~ Determination. Before applying for a license, a person may request the Board to determine if the prospective applicant's fitness ~~[moral character]~~ satisfies the Board's requirements for licensing by submitting the request form approved by the Board and paying the required fee. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for a license.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903186  
Kristen Worman  
General Counsel  
Texas Appraiser Licensing and Certification Board  
Effective date: September 9, 2019  
Expiration date: January 6, 2020  
For further information, please call: (512) 936-3652



# 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 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 44. BOVINE VIRAL DIARRHEA

##### 4 TAC §44.1, §44.2

The Texas Animal Health Commission (TAHC) proposes new §44.1 and §44.2 within new Chapter 44. The purpose of new Chapter 44 is to establish a Bovine Viral Diarrhea Virus (BVDV) program.

##### BACKGROUND:

Bovine viral diarrhea (BVD) is an economically impactful 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 the 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 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. 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, de-

creased 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. To provide Texas cattle some mitigation from the risk of exposure to PI cattle, Chapter 44, entitled "Bovine Viral Diarrhea Program" 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 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.

##### REGULATORY ANALYSIS

**Public Benefit:** Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will allow the agency to more effectively address the risk from cattle that have tested positive for BVDV and reduce the risk of exposure to other cattle in the state.

**Local Employment Impact Statement:** In accordance with Texas Government Code §2001.022, the Commission has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

**Major Environmental Rule:** The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule because the specific intent of these rules is not primarily to pro-

tect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

**Takings Assessment:** The Commission has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with Title 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

**Economic Impact Statement:** The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because the rule applies to all cattle that test positive for the disease, and the reporting requirements are intended to prevent exposure to other cattle in the state. As a result, application of the rule will help prevent adverse economic impacts.

**Regulatory Flexibility Analysis:** The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule allows the Commission to identify animals that have been disclosed as being positive for a disease that negatively impacts the Texas cattle industry and to quickly and efficiently retest and possibly track positive animals thereby protecting other similarly situated cattle from consequential disease exposure. Because no adverse impact will occur, a regulatory flexibility analysis is not required.

**Government Growth Impact Statement:** In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). Except as provided below, the rule:

- (1) will create a government program;
- (2) will not create new employee positions or eliminate existing employee positions;
- (3) will not require an increase or decrease in future legislative appropriations to the agency;
- (4) will not require an increase or decrease in fees paid to the agency;
- (5) will create a new regulation in that it adds a disclosure requirement for sellers of certain infected cattle.
- (6) will not expand, limit, or repeal an existing regulation;
- (7) may increase the number of individuals subject to regulation; and
- (8) will not adversely affect this state's economy.

**Cost to Regulated Persons (Cost-in/Cost-out):** The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all cattle within the state from diseases that pose a negative disease risk to the Texas cattle industry. It does not impose a direct cost on regulated persons, including a state agency, a special district, or a local government, within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

## REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

## STATUTORY AUTHORITY

The amendments are proposed 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" "the 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 proposed 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) The seller of BVDV Persistently Infected Cattle must disclose this 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903317

Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 719-0700



## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

##### 13 TAC §§31.1, 31.3 - 31.5, 31.8

The Texas Commission on the Arts (Commission) proposes the repeal of 13 Texas Administrative Code (TAC) §§31.1, 31.3 - 31.5 and 31.8.

##### *Background and Purpose*

Section 31.1, because it merely restates the statutory language of Texas Government Code §444.021, rather than implement, interpret the law or describe the procedural requirements of a state agency, 13 TAC §31.1, which directs the Commission to carry out its legal duties, is redundant and unnecessary.

Section 31.3, concerns the meetings of the Commission and addresses matters such as the frequency of meetings, emergency meetings, location of meetings, what constitutes a quorum, and the fact that no proxies are permitted at meetings.

Chapter 2001 of the Administrative Procedure Act (APA) excludes from its definition of a "rule" a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures. Government Code §2001.003(6). Because subsections (a), (b), (c), (e), and (f) concern the internal management of the agency and do not affect the interests of the public at large, they do not meet the APA's definition of a rule. *Combs v. Entertainment Publ'ns*, 292 S.W.3d 712, 721 (Tex. App. - Austin 2009, no pet.).

Section 31.4, the rule establishes various committees of the Commission. The Commission proposes the repeal of this rule because this rule is no longer necessary. When the Commission was comprised of 17 members, it was more efficient to work in committees. Because the Commission is now comprised of nine members, it is more cost effective and efficient to act as a committee of a whole at each board meeting.

Section 31.5, concerns guidelines and policies for Commission staff.

Chapter 2001 of the Administrative Procedure Act (APA) defines a "rule" as a "state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Because this rule concerns the internal management

of the agency and does not affect the interests of the public at large, it does not meet the APA's definition of a rule. *Combs v. Entertainment Publ'ns*, 292 S.W.3d 712, 721 (Tex. App. - Austin 2009, no pet.).

Section 31.8, concerns travel guidelines for staff and Commission members.

Chapter 2001 of the Administrative Procedure Act (APA) defines a "rule" as a "state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Because this rule concerns the internal management of the agency and does not affect the interests of the public at large, it does not meet the APA's definition of a rule. *Combs v. Entertainment Publ'ns*, 292 S.W.3d 712, 721 (Tex. App. - Austin 2009, no pet.).

##### *Fiscal Impact on State and Local Government*

Gary Gibbs, Ph.D., the Executive Director for the Commission, has determined for the first five-year period the rules are repealed, there will be no fiscal implications for the state or local governments as a result of the proposal.

Because there is no effect on local economies for the first five years that the proposed repeals are in effect, no local employment impact statement is required by Texas Government Code §2001.022.

##### *Public Benefits / Costs to Regulated Persons*

The Executive Director has determined that for each of the first five years the rules are repealed, the public benefit is that the Commission's rules will conform to the Administrative Procedure Act requirements.

There are no costs to individuals because the Commission does not regulate people.

##### *One-for-one Rule Analysis*

Because the Commission does not regulate individuals, the proposal does not impose a cost on a person. The proposed repeals do not impose a cost on another state agency or a special district; therefore it is not subject to Texas Government Code §2001.0045.

##### *Government Growth Impact Statement*

For each of the first five years the repeals are in effect, the agency has determined that it does not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) increase or decrease the future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand or repeal an existing regulation; and (7) does not negatively affect the state's economy.

Because the Commission does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposal.

##### *Local Employment and Impact Statement*

The Executive Director has determined that no local economies are substantially affected by the proposal and, as such, the Commission is exempted from preparing a local employment impact statement, pursuant to Government Code §2001.022.

### *Fiscal Impact on Small and Micro-businesses and Rural Communities*

The Executive Director has determined that the proposal will not have an adverse impact on small or micro-businesses, or rural communities because there are no substantial anticipated costs to people. As a result, the Commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, is not required.

### *Takings Impact Assessment*

The Commission has determined that there are no private real property interests affected by the proposal; thus, the Commission asserts that preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required

### *Environmental Rule Analysis*

The Commission has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure. It is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

### *Request for Public Comments*

Written comments regarding the proposed repeals may be submitted by mail to Texas Commission on the Arts at P.O. Box 13406 Austin, Texas 78711-3406, by fax to (512) 475-2699, or by email to [ggibbs@arts.texas.gov](mailto:ggibbs@arts.texas.gov). All comments must be received within 30 days of publication of this proposal.

### *Statutory Authority*

This proposal is made pursuant to Texas Government Code §444.009, the Commission's general rulemaking authority.

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

§31.1. *Purpose.*

§31.3. *Meetings.*

§31.4. *Committees.*

§31.5. *Staff.*

§31.8. *Travel.*

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903275

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-6561



### **13 TAC §31.2**

The Texas Commission on the Arts (Commission) proposes amendments to 13 Texas Administrative Code (TAC) §31.2.

### *Background and Purpose*

This rule concerns the conduct of meetings when the Commission's Chair is absent.

### *Section-by-section Summary*

This rule concerns the conduct of meetings when the Commission's Chair is absent.

### *Section-by-section Summary*

Subsection (a) is amended to eliminate officer positions that the Commission deems unnecessary to the conduct of its meetings. This section maintains the Vice-Chair position and makes a minor grammatical change by capitalizing and hyphenating the title Vice-Chair.

Chapter 2001 of the Administrative Procedure Act (APA) defines a "rule" as a "state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Subsection (b) and (j) are struck because they do not meet the definition of a rule as they simply restate Government Code §444.005. Subsection (c) is struck because it only restates Government Code §444.003(a). In addition, because they merely restate the law, they are redundant and unnecessary.

Subsection (d) is amended to state that only the Vice-Chair is elected.

Subsection (e) is amended to state that only the Vice-Chair is elected annually.

Subsection (f) is amended to explain how only the Vice-chair is replaced if he or she resigns.

Subsection (g) strikes the language that states that the Chair presides at all meetings because it not a rule as defined under the APA. This subsection is already set out in Government Code §444.005. This subsection is amended to make a minor grammatical change by capitalizing and hyphenating Vice-Chair.

The subsections are re-lettered in alphabetical order.

A new subsection (f) is added to address the situation when both the Chair and Vice-Chair are absent. In this event, the quorum of the Commission members at the meeting elect an acting Chair.

### *Fiscal Impact on State and Local Government*

Gary Gibbs, Ph.D., the Executive Director for the Commission, has determined for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or local governments, as a result of the proposed amendments

Because there is no effect on local economies for the first five years that the proposed amendments are in effect, no local employment impact statement is required by Texas Government Code §2001.022.

### *Public Benefits / Costs to Regulated Persons*

The Executive Director has determined that for each of the first five years the amendments are in effect, this rule will eliminate redundancies and better clarify the process to address the absence of the Chair at commission meetings.

There are no costs to individuals because the Commission does not regulate people.

### *One-for-one Rule Analysis*



Because the Commission does not regulate individuals, the proposed amendments does not impose a cost on a person. The amendments do not impose a cost on another state agency or a special district; therefore Texas Government Code §2001.0045 does not apply.

#### *Government Growth Impact Statement*

For each of the first five years the amendments are in effect, the agency has determined that the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) increase or decrease the future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand or repeal an existing regulation; and (7) does not negatively affect the state's economy.

Because the Commission does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposed amendments.

#### *Local Employment and Impact Statement*

Executive Director has determined that no local economies are substantially affected by the rules and, as such, the Commission is exempted from preparing a local employment impact statement, pursuant to Government Code §2001.022.

#### *Fiscal Impact on Small and Micro-businesses and Rural Communities*

The Executive Director has determined that the proposed amendments will not have an adverse impact on small or micro-businesses, or rural communities because there are no substantial anticipated costs to people. As a result, the Commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, is not required.

#### *Takings Impact Assessment*

The Commission has determined that there are no private real property interests affected by the rules; thus, the Commission asserts that preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

#### *Environmental Rule Analysis*

The Commission has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure. It is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

#### *Request for Public Comments*

Written comments regarding the proposed amendments may be submitted by mail to Texas Commission on the Arts at P.O. Box 13406 Austin, Texas 78711-3406, by fax to (512) 475-2699, or by email to ggibbs@arts.texas.gov. All comments must be received within 30 days of publication of this proposal.

#### *Statutory Authority*

This proposal is made pursuant to Texas Government Code §444.009, the Commission's general rulemaking authority.

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

§31.2. *Officers.*

(a) The officers of the Commission shall be the Chair and Vice-Chair.

~~[(a) The officers of the Commission shall be a chair, (the immediate past Chair if still a member of the Commission), a vice chair, a secretary, a treasurer, and a parliamentarian. These officers shall perform the functions prescribed by law or assigned them by the Commission from time to time and shall perform all functions customarily performed by such officer.]~~

~~[(b) The Chair shall be appointed by the Governor of Texas.]~~

~~[(c) Two members of the Commission shall be residents of a county with a population of less than 50,000.]~~

~~[(d) The Vice-Chair [All officers] shall be elected from the membership of the Commission for a one-year term.~~

~~[(e) The election of the Vice-Chair [Election of officers] shall be held annually at the first meeting of the fiscal year. The Vice-Chair [ Newly elected officers] will assume [their] his or her position [positions] immediately.~~

~~[(f) Should the Vice-Chair [an officer] resign, the Commission [Chair] will elect [appoint] a successor.~~

~~[(g) [The Chair shall preside at all meetings of the Commission.] If the Chair is unavailable, the Vice-Chair [vice chair] shall act in the Chair's stead.~~

~~[(h) If the Chair and Vice-Chair are unavailable at a meeting, the Commission members will elect, from the quorum of Commission members at the meeting, a temporary chairperson to preside at that meeting.~~

~~[(i) No member shall hold more than one office at a time.~~

~~[(j) No member shall serve more than two consecutive full terms in any one office.~~

~~[(k) The Chair shall serve at the pleasure of the Governor.]~~

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903270

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-6561



### **13 TAC §31.10**

The Texas Commission on the Arts (Commission) proposes amendments to 13 Texas Administrative Code (TAC) §31.10.

#### *Background and Purpose*

This rule concerns the Commission's grant application forms and instructions, by reference to its "Guide to Programs and Services."

This rule is amended to update the date of the last edition of the guidelines. This proposal also adds the website address for the grant applications.

### *Fiscal Impact on State and Local Government*

Gary Gibbs, Ph.D., the Executive Director for the Commission, has determined for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or local governments, as a result of the proposed amendments

Because there is no effect on local economies for the first five years that the proposed amendments are in effect, no local employment impact statement is required by Texas Government Code §2001.022.

### *Public Benefits / Costs to Regulated Persons*

The Executive Director has determined that for each of the first five years the amendments are in effect, this rule will reference the most recent edition of the guidelines and provide the website to obtain the Commission's grant application forms, providing the accurate edition and an alternative means for applicants to find the required forms and instructions.

There are no costs to individuals because the Commission does not regulate people.

### *One-for-one Rule Analysis*

Because the Commission does not regulate individuals, the proposed amendments do not impose a cost on a person. The amendments do not impose a cost on another state agency or a special district; therefore Texas Government Code §2001.0045 does not apply.

### *Government Growth Impact Statement*

For each of the first five years the amendments are in effect, the agency has determined that the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) increase or decrease the future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand or repeal an existing regulation; and (7) negatively affect the state's economy.

Because the Commission does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposed amendments.

### *Local Employment and Impact Statement*

The Executive Director has determined that no local economies are substantially affected by the rules and, as such, the Commission is exempted from preparing a local employment impact statement, pursuant to Government Code §2001.022.

### *Fiscal Impact on Small and Micro-businesses and Rural Communities*

The Executive Director has determined that the proposed amendments will not have an adverse impact on small or micro-businesses, or rural communities because there are no substantial anticipated costs to people. As a result, the Commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, is not required.

### *Takings Impact Assessment*

The Commission has determined that there are no private real property interests affected by the rules; thus, the Commission asserts that preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

### *Environmental Rule Analysis*

The Commission has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure. It is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

### *Request for Public Comments*

Written comments regarding the proposed amendments may be submitted by mail to Texas Commission on the Arts at P.O. Box 13406 Austin, Texas 78711-3406, by fax to (512) 475-2699, or by email to ggibbs@arts.texas.gov. All comments must be received within 30 days of publication of this proposal.

### *Statutory Authority*

This proposal is made pursuant to Government Code §444.009, the Commission's general rulemaking authority, and Government Code §444.024, the Commission's authority to issue grants.

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

### *§31.10. Grant Application Form.*

The Commission adopts by reference application forms and instructions for the Grant Application Form as outlined in A Guide to Programs and Services as amended [amended July 2009]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711 and at [www.arts.texas.gov](http://www.arts.texas.gov).

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

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

TRD-201903342

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-6561

## **TITLE 16. ECONOMIC REGULATION**

### **PART 8. TEXAS RACING COMMISSION**

#### **CHAPTER 303. GENERAL PROVISIONS**

##### **SUBCHAPTER G. HORSE INDUSTRY**

##### **ESCROW ACCOUNT**

The Texas Racing Commission ("the Commission") proposes new 16 TAC §§303.301, Definitions; 303.302, General Provisions; 16 TAC §303.311, Allocations to Horse Racetrack Associations; 16 TAC §303.312, Limitation on Use of Funds by Racetrack Associations; 16 TAC §303.321, Allocations to Breed Registries; 16 TAC §303.322, Limitations on Use of Funds by Breed Registries; 16 TAC §303.323, Modifications to Approved Events; 16 TAC §303.324, Recordkeeping and

Audits; 16 TAC §303.325, Quarterly Reports; and the repeal of 16 TAC §321.509, Escrowed Purse Account. The proposed new sections make up Subchapter G, relating to the horse industry escrow account created by House Bill 2463 (86th Legislature, Regular Session, 2019). Section 303.301 defines certain terms relating to the account, and §303.302 establishes general provisions relating to both the portion of the funds to be allocated to horse racetrack associations for purses and the portion to be allocated to breed registries for events that further the horse industry. Section 303.311 contains provisions currently in 16 TAC §321.509, Escrowed Purse Account (being proposed for repeal elsewhere in this issue) regarding allocations to horse racetrack associations for purses, and §303.312 restates the limitation in H.B. 2463 that funds allocated to racetrack associations from the horse industry escrow account may only be used for purses. Section 303.321 establishes the requirements for a breed registry's request for allocation of funds from the account, the criteria for the Commission to approve and prioritize requests, and allows the executive director to act on behalf of the Commission to approve requests prior to January 1, 2020. Section 303.322 establishes limitations on the use of funds by breed registries, including types of expenses that cannot be paid with funds from the account. Section 303.323 contains requirements for requests for approval of changes to previously approved events, including which changes can be approved by the executive director and which changes must be approved by the Commission. Section 303.324 requires breed registries to maintain records of expenses paid with funds from the account, allows the Commission and other agencies to conduct audits, and requires breed registries to include the funds received from the account in the audits they are required to submit to the Commission each year. Finally, §303.325 requires breed registries receiving funds from the account to submit quarterly reports to the Commission regarding use of the funds.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing the new sections. Enforcing or administering the new sections does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the new sections are in effect, the anticipated public benefit will be the economic benefits of strengthened horse racing and horse industries resulting from the implementation of H.B. 2463. There is no probable economic cost to persons required to comply with the sections. Persons (breed registries) choosing to apply for and receive funds from the account may experience some economic costs associated with complying with the requirements, but those costs are expected to be offset by additional membership fees and other income due to growth of the industry resulting from the stimulus effect of the funds.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed new sections are in effect, the government growth impact is as follows: the new sections do not create or eliminate a government program; the new sections do not create any new employee positions or eliminate any existing employee positions; implementation of the new sections does not require an increase or decrease in future legislative appropriations to the agency; the new sections do not require an increase or decrease in fees paid to the agency; the new sections create new regulations; the new sections do not expand existing regulations; the new sections do not repeal existing regulations; the new sections do not increase or decrease the number of individuals subject to the rule's applicability; and the new sections are expected to have a significant positive effect on this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed new sections will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed new sections.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed new sections do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed new sections will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed new sections will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed new sections may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### DIVISION 1. GENERAL PROVISIONS

#### 16 TAC §303.301, §303.302

## STATUTORY AUTHORITY

The new sections are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

### §303.301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Account - the horse industry escrow account.
- (2) Association - a horse racetrack association.
- (3) Event - a planned occasion or activity, such as a competition or other public gathering, including one planned and/or hosted by an organization other than a state horse breed registry.

### §303.302. General Provisions.

(a) At least once each year, the Commission shall make an allocation of funds from the horse industry escrow account in accordance with §§2028.204-.205 of the Act.

(b) The Commission may make allocations of funds from the account at different times to horse racetrack associations and to breed registries, provided that not more than 70% of the amount deposited into the account is allocated to racetrack associations each year.

(c) At least 30 days before a deadline for submitting requests for allocation from the account, the executive director shall notify all entities eligible to request funds from the account at that 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.

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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## DIVISION 2. HORSE RACETRACK ASSOCIATIONS

### 16 TAC §303.311, §303.312

The new sections are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

### §303.311. Allocations to Horse Racetrack Associations.

(a) When requesting allocation from the account for purses, each association shall also recommend the percentages by which it will divide its share of the horse industry escrow account funds among the various breeds of horses.

(b) The Commission shall determine the amount of the allocation to each racetrack in accordance with the standards set forth in the Act, §§2028.204-.205.

(c) The percentages by which an association will divide the horse industry escrow account revenue among the various breeds of horses is subject to the approval of the Commission. When requesting Commission approval of the percentages, the association shall present in writing studies, statistics, or other documentation to support its proposed division of horse industry escrow account revenue. The Commission may consider the following criteria when evaluating the association's studies, statistics, or other documentation submitted to support its proposed division of horse industry escrow account revenue before granting its approval:

(1) local public interest in each breed as demonstrated by, but not limited to, the following factors:

- (A) simulcast import handle by breed;
- (B) live handle by breed; and
- (C) live attendance.

(2) earnings generated by the association from each breed;

(3) racetrack race date request and opportunities given to each breed;

(4) statewide need by breed; and

(5) national public interest in each breed as determined by the live simulcast export handle of each Texas meet.

(d) If the Commission determines that the association's proposed division of the horse industry escrow account revenue is inconsistent with the association's obligation to accord reasonable access to races for all breeds of horses, the Commission may:

(1) require the association to submit additional information supporting its recommendation for consideration at the next Commission meeting;

(2) reject the association's recommendation and require the association to submit a new recommendation for consideration at the next Commission meeting; or

(3) reject the association's recommendation and approve an alternate division of the horse industry escrow account revenue as determined by the Commission.

(e) In lieu of the process outlined in subsections (c) and (d) of this section, a signed agreement between the association and the organizations recognized by the Commission or in the Act as representatives of horse owners, trainers, and/or breeders may be submitted to the Commission for consideration and approval. For the Commission to approve the agreement, the agreement must:

(1) delineate the percentages by which the horse industry escrow account revenue received by the association will be divided amongst the various breeds of horses; and

(2) be signed by all organizations recognized by the Commission or in the Act as representatives of horse owners, trainers, and/or breeders.

### §303.312. Limitation on Use of Funds by Racetrack Associations.

Funds allocated to racetrack associations from the horse industry escrow account may only be used for purses.

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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### DIVISION 3. BREED REGISTRIES

#### 16 TAC §§303.321 - 303.325

The new sections are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

#### §303.321. Allocations to Breed Registries.

(a) A breed registry is eligible to request funds from the horse industry escrow account if it is listed in Section 2030.002(a) of the Act.

(b) When requesting an allocation from the horse industry escrow account, an eligible breed registry shall indicate the event(s) for which it intends to use the funds and provide the following information for each event:

- (1) the date(s) or approximate date(s);
- (2) a detailed description of the event;
- (3) the dollar amount requested for the event;
- (4) a detailed explanation of the budget for the event; and
- (5) the anticipated economic impact of the event on the horse industry.

(c) The Commission may approve a request for allocation of funds submitted by an eligible breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that the request satisfies the requirement that the funds be used for events to further the horse industry. Requests may be approved in full or in part, at the discretion of the Commission.

(d) In the event that the total of funds requested by eligible breed registries exceed the funds expected to be available in the account, the Commission may approve requests on a pro rata basis, may approve funding for certain events but not others, or a combination. Priority shall be given to events that the Commission finds likely to have the greatest economic impact in the following areas:

- (1) the state's horse racing industry;
- (2) live racing at the state's racetracks;
- (3) the horse breeding industry;

(4) the state of Texas as a whole; and

(5) non-racing horse industry activities.

(e) Notwithstanding subsections (c) and (d) of this section, prior to January 1, 2020, the executive director may act on behalf of the Commission to approve requests for allocation from the account.

#### §303.322. Limitations on Use of Funds by Breed Registries.

(a) A breed registry may use horse industry escrow account funds only for events that further the horse industry. The Commission may require a breed registry to repay funds if the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act and this section within twelve months of the date it receives the funds. The following types of costs may not be paid from funds allocated from the account:

(1) operating expenses, including the salaries of breed registry staff, interest and other financial costs related to borrowing and the cost of financing, contributions to a contingency reserve or any similar provision for unforeseen events, and audits or other accounting services;

(2) the purchase of capital assets or capital improvements;

(3) donations or contributions made to any individual or organization without express approval from the Commission for such contribution or donation;

(4) costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, tips, and gratuities;

(5) fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, or local laws and regulations;

(6) liability insurance coverage not specific to a particular event or series of events for which the Commission has allocated funds from the account;

(7) expenses related to litigation;

(8) professional association fees or dues for the breed registry or an individual;

(9) legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction; or

(10) fundraising.

(b) A breed registry may pay a cost out of funds awarded from the horse industry escrow account if it satisfies subsection (a) of this section and is reasonable and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost and it is necessary to achieve the purpose for which the funds were sought.

(2) A cost is adequately documented if the cost is supported by Generally Accepted Accounting Principles, the breed registry's accounting records, and documented in accordance with §303.325 of this subchapter (relating to Quarterly Reports).

#### §303.323. Modifications to Approved Events.

(a) A breed registry seeking to make a modification to the date, description, or budget for an event for which funds have been allocated from the horse industry escrow account shall submit a request to:

(1) the executive director for changes to one or more of the following:

(A) the date, if the proposed new date is within six months of the original date;

(B) the description, if the change does not materially change the nature or scope of the event; or

(C) the budget, if the proposed new budget is within ten percent of the original budget for the event; or

(2) the Commission, for all other changes.

(b) The request must explain the proposed change, the reason for the change, and the anticipated economic impact of the event as modified on the horse industry.

(c) The executive director may approve or deny a change requested under subsection (a)(1) of this section or may forward the request to the Commission for consideration.

§303.324. Recordkeeping and Audits.

(a) Subject to audit by the Commission or auditors or investigators working on behalf of the Commission, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, a breed registry receiving funds from the horse industry escrow account shall maintain all records of expenses paid out of funds from the account for a minimum of five years following the event. Records may be maintained in electronic or paper format.

(b) The Commission may request, and the breed registry must provide, any such record as part of a review or audit.

(c) The funds received and/or expended by the breed registry from the horse industry escrow account must be included in the breed registry's annual audit of the financial statements required to be submitted by June 15 of each year. An auditor's statement must be included as part of the annual audit attesting to the proper use of the funds received from the horse industry escrow account by the breed registry.

§303.325. Quarterly Reports.

(a) A breed registry receiving funds from the horse industry escrow account shall submit to the Commission a report every quarter. The report must include:

(1) the amount of funds expended toward each event for which funds have been allocated;

(2) for each completed event, the total amount of funds expended toward the event and a breakdown of the funds expended for that event; and

(3) the following certification: "By my signature below, I certify that (1) all of the information in this report is correct, (2) all funds expended from the horse industry escrow account were used in accordance with Section 2028.204 of the Texas Racing Act and the Rules of the Texas Racing Commission, and (3) the breed registry has all documentation required by 16 TAC §303.324.

(b) Quarterly reports shall be submitted to the Commission no later than November 30, February 28, May 31, and August 31 of each year.

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

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Chuck Trout

Executive Director

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## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER A. RACETRACK LICENSES

#### DIVISION 1. GENERAL PROVISIONS

##### 16 TAC §309.8

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §309.8, Racetrack License Fees. The proposed amendments would reduce racetrack license fees, increase the number of base race days included in the fee for Class 1 tracks, require Class 1 tracks not using all of their base days to share them with another Class 1 track at no cost, increase the cost of additional race days beyond the base days, impose an additional fee in the event that the simulcast tax paid to the Commission under House Bill 1995 (86th Legislature, Regular Session, 2019) falls short of projections, and requires the executive director to impose a moratorium on racetrack license fees in the event that the agency brings in more revenue than it needs.

##### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

##### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be consistency with HB 1995's intent to reduce racetrack license fees while keeping agency revenue stable. There is no probable economic cost to persons required to comply with the rule.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency (although they do result in a decrease in fees paid to the agency); the amendments do not create a new regulation; the amendments do not expand or limit existing regulations;

the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2025.108, which authorizes the commission to prescribe reasonable annual fees to be paid by racetrack license holders.

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

#### §309.8. Racetrack License Fees.

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and en-

force the Act[,] and to regulate, oversee, and license live and simulcast racing at racetracks.

(b) Annual License Fee. A licensed racing association shall pay an annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month. The annual license fee for each license type is as follows:

- (1) for a Class 1 racetrack, \$200,000;
- (2) for a Class 2 racetrack, \$95,000;
- (3) for a Class 3 or 4 racetrack, \$25,000; and
- (4) for a Greyhound racetrack, \$140,000.

#### (c) Adjustment of Fees.

(1) Annual fees are calculated using a projected base of 48 days of live horse racing per Class 1 racetrack, 8 days of live horse racing per Class 3 or 4 racetrack, and a total of 36 performances of live greyhound racing per fiscal year. If a Class 1 horse racetrack does not intend to use all of the race days allotted to it, it shall share the unused days with another Class 1 track, provided that the track receiving the unused days is not required to compensate the track sharing the days. To cover the additional regulatory cost in the event additional days or performances are requested by the associations, the executive secretary may:

(A) recalculate a horse racetrack's annual fee by adding \$5,345 for each live race day added beyond the base; and

(B) recalculate a greyhound racetrack's annual fee by adding \$750 for each live performance added beyond the base.

(2) If the simulcast tax revenue collected in any quarter ending November 30, February 28, May 31, or August 31 is less than 96 percent of the amount collected in the same period the year before, the fees in subsection (b) of this section shall be increased, for the second month of the following quarter, on a pro rata basis in an amount sufficient to generate revenue in the amount of the difference between the amount of simulcast tax revenue collected in the quarter and the amount that is 96 percent of the amount collected in the same quarter the year before.

(3) If the executive secretary determines that the total revenue from the annual fees exceeds the amount needed to pay its costs, the executive secretary shall order a moratorium on all or part of the license fees remitted monthly by any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for imposing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year, and the Commission's projected expenses during the next fiscal year.

{(b) Fees for The Period From September 1, 2018; Through February 28, 2019.

{(4) Base License Fee. A licensed racing association shall pay a license fee in the following annualized amount:

- {(A) for a Class 1 racetrack, \$714,650;
- {(B) for a Class 2 racetrack, \$127,600;
- {(C) for a Class 3 or 4 racetrack, \$35,725; and
- {(D) for a Greyhound racetrack, \$204,175.

{(2) Adjustment of Fees. Annualized fees are calculated using a base of 68 days of live horse racing and 36 performances of live greyhound racing per fiscal year. To cover the additional regulatory cost in the event additional days or performances are requested by the associations the executive secretary may:

{(A) recalculate a horse racetrack's annualized fee by adding \$6,313 for each live day added beyond the base;

{(B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each live performance added beyond the base; and

{(C) review the original or amended race date request submitted by each association to establish race date baselines for specific associations if needed.

{(3) Payment of Fee. Each association shall pay its license fee by remitting to the Commission 1/12 of its annualized fee on the first business day of each month.

{(e) Unless the Commission Amends These Provisions, Fees for The Period Beginning March 1, 2019:

{(1) Base License Fee. A licensed racing association shall pay a license fee in the following annualized amount:

{(A) for a Class 1 racetrack, \$540,000;

{(B) for a Class 2 racetrack, \$230,000;

{(C) for a Class 3 or 4 racetrack, \$70,000; and

{(D) for a Greyhound racetrack, \$360,000.

{(2) Adjustment of Fees. Annualized fees are calculated using a base of 83 days of live horse racing and 270 performances of live greyhound racing per fiscal year. To cover the additional regulatory cost in the event additional days or performances are requested by the associations the executive secretary may:

{(A) recalculate a horse racetrack's annualized fee by adding \$3,750 for each live day added beyond the base;

{(B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each live performance added beyond the base; and

{(C) review the original or amended race date request submitted by each association to establish race date baselines for specific associations if needed.

{(3) Payment of Fee.

{(A) For the period from March 1 through August 31, 2019:

{(i) On the first business day of the month, an association that is conducting live racing or simulcasting shall pay its license fee by remitting to the Commission 1/12 of the fee specified in Section 309.8(c)(1), as adjusted pursuant to Section 309.8(c)(2).

{(ii) On the first business day of the fiscal quarter, an association that is not conducting live racing or simulcasting shall pay its license fee by remitting to the Commission 1/4 of the fee specified in Section 309.8(c)(1).

{(B) For the period beginning September 1, 2019:

{(i) An association that is conducting live racing or simulcasting shall pay its license fee by remitting to the Commission 1/12 of the total fee on the first business day of each month.

{(ii) An association that is not conducting live racing or simulcasting shall pay its license fee in four equal installments on September 1, December 1, March 1, and June 1 of each fiscal year.

{(d) If the executive secretary determines that the total revenue from the fees exceeds the amount needed to pay those costs, the executive secretary may order a moratorium on all or part of the license fees remitted monthly by any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for providing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year, and the Commission's projected expenses during the next fiscal year.]

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

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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## DIVISION 2. ACTIVE AND INACTIVE RACETRACK LICENSES

### 16 TAC §309.51

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §309.51, Designation of Active and Inactive Racetrack Licenses. The proposed amendments would update the name of the Escrowed Purse Account to Horse Industry Escrow Account in light of HB 2463 and would also update the citation to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be updated terminology. There is no probable economic cost to persons required to comply with the rule.

### LOCAL EMPLOYMENT IMPACT STATEMENT

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

### GOVERNMENT GROWTH IMPACT STATEMENT



For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand or limit existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

#### §309.51. Designation of Active and Inactive Racetrack Licenses.

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

(d) Racetrack Reviews.

(1) Racetracks designated "Active-Operating" or "Active-Other" will undergo an ownership and management review every five years pursuant to §2025.106 [~~§6.06(k)~~] of the Act.

(2) (No change.)

(e) Bonds.

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

(4) The bond of a horse racetrack that is forfeited under this section shall accrue to the Horse Industry Escrow Account under §§2028.204-.205 of the Act [~~Escrowed Purse Account under §321.509 of this title (relating to Escrowed Purse Account)~~] and shall be distributed in accordance with those sections [~~that section~~]. The bond of a greyhound racetrack that is forfeited under this section shall accrue to the state greyhound breed registry and be distributed through the Accredited Texas Bred Program.

(5) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on September 13, 2019.

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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER B. OPERATIONS OF RACETRACKS

### DIVISION 2. FACILITIES AND EQUIPMENT

#### 16 TAC §309.118

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §309.118, Regulatory Office Space and Equipment. The proposed amendments would update provisions requiring racetrack associations to provide telephone lines for accessing the internet to instead require Ethernet or other secure internet lines for this purpose, and would also update the title of the executive director of the agency.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of en-

forcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be ensuring updated telecommunications infrastructure for agency operations at racetracks, as well as updated terminology. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand or limit existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings

impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

#### §309.118. *Regulatory Office Space and Equipment.*

(a) An association shall provide adequate office space for the use of the stewards or racing judges, occupational licensing personnel, the Commission's investigative unit, the pari-mutuel auditing staff and the staff employed by the comptroller, the Commission veterinary and drug testing staff, and the Department of Public Safety. The location and size of the office space, furnishings, electrical outlets, telephone lines, television monitors, and equipment required under this section must be approved by the executive director [secretary].

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

(e) The office space for occupational licensing personnel must consist of two rooms, one of which must be private. The room that is not private must be equipped with:

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

(6) a dedicated Ethernet [telephone] line to be used by a credit card machine or other secure line with access to the internet that is acceptable to the executive director [and that does not require a code to access an outside line];

(7) - (9) (No change.)

(f) The office space for the pari-mutuel auditing staff and the staff employed by the comptroller must:

(1) - (7) (No change.)

(8) if requested by the Commission or the comptroller, have an additional Ethernet or other secure line with access to the internet that is acceptable to the executive director [voice line to support dial-up capabilities for a personal computer]; and

(9) a dedicated telephone line to be used by a fax machine.

(g) Commission Veterinarian's Office.

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

(5) The office must be equipped with:

(A) a sink with hot and cold water built into a counter of a size required by the executive director [secretary];

(B) desks and filing cabinets, in numbers as required by the executive director [secretary], equipped with locks;

(C) at horse racetracks, refrigerators and freezers, in sizes and numbers as required by the executive director [secretary], equipped with locks;

(D) at greyhound racetracks, a freezer in a size as required by the executive director [secretary];

(E) a storage area, of a size required by the executive director [secretary], with a door approved by the executive director; [secretary.]

(F) telephone lines with telephones as required by the executive director [secretary];

(G) television monitors as required by the executive director [secretary]; and

(H) at horse racetracks, a freestanding counter of a size required by the executive director [secretary].

(6) All locks must be of a type approved by the executive director [secretary].

(h) (No change.)

(i) All telephone lines provided under this section must:

(1) be assigned a unique telephone number that is directly accessible by outside callers;

(2) if requested by the executive director [secretary], be listed in the governmental section of the local telephone directory; and

(3) if requested by the executive director [secretary], be listed on the association's website.

(j) An association shall provide at its expense computer lines, phone equipment, and any necessary voice and data network cabling in the offices of the state regulatory and law enforcement personnel as prescribed by the executive director [secretary]. In addition, the association shall reimburse the Commission for the costs of any network or data circuits installed or caused to be installed by the Commission at the association's location.

(k) All costs of telecommunications for regulatory and law enforcement personnel provided under this section shall be paid by the association and the telecommunications service may not be interrupted at any time. To ensure minimal disruption to the Commission's regulatory functions, the association shall ensure the Commission staff has twenty-four hour access and keys to any telecommunications rooms serving regulatory and law enforcement personnel as prescribed by the executive director [secretary].

(l) An association shall provide to the Commission a number of keys to the Commission offices as approved by the executive director [secretary].

(m) (No change.)

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

Filed with the Office of the Secretary of State on September 13, 2019.

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Chuck Trout  
Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §319.3

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §319.3, Medication Restricted. The proposed amendments would add albuterol to the current prohibition on clenbuterol, would eliminate the provisions placing a horse on the Veterinarian's List for testing positive for clenbuterol, and would require a negative test for all beta-agonist drugs (the class of drugs that includes clenbuterol and albuterol) before being removed from the Veterinarian's List after being voluntarily placed on the list for therapeutic use of clenbuterol or albuterol.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be increased assurance that race animals are not being administered bronchodilators for their anabolic effects, as well as greater consistency in how medication restrictions are implemented. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments expand existing regulations by prohibiting the use of albuterol; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the

amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act, and § 2034.001, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

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

#### §319.3. Medication Restricted.

(a) - (e) (No change.)

(f) Except as provided in paragraph (1) [(2)] of this subsection, clenbuterol and albuterol are [is] prohibited and shall not be administered to a horse participating in racing at any time.

[(1) Any horse that is the subject of a finding by the stewards that a test specimen contains clenbuterol shall immediately be placed on the Veterinarian's List for not less than 60 days.]

[(A) In order to have a horse removed from the Veterinarian's List after being placed on the list under this subsection, the trainer must contact a commission veterinarian to schedule a time and test barn location where the horse must be presented after the sixtieth day in order for a commission veterinarian to obtain test specimens to be submitted to the official laboratory for testing.]

[(B) The cost of each test conducted under this section, including applicable shipping costs, shall be borne by the owner and must be paid in full at the time the specimens are shipped to the laboratory.]

[(C) The collected specimens must not have any detectable level of clenbuterol. If no detectable level of clenbuterol is present, the horse shall be removed from the Veterinarian's List. If a detectable level of clenbuterol is present, then the horse shall remain on the Veterinarian's List until such time that a test specimen reveals no detectable level of clenbuterol.]

[(D) A horse placed on the Veterinarian's List pursuant to this subsection may not be entered in a race until it has been removed from the list.]

(1) [(2)] A horse may only be administered clenbuterol or albuterol if:

(A) it [~~the clenbuterol~~] is prescribed by a licensed veterinarian;

(B) within 24 hours of initiating treatment, the trainer or owner has submitted to the Commission a form prescribed by the Commission and signed by the veterinarian, indicating:

(i) the name of the horse;

(ii) the name of the trainer;

(iii) the name of the veterinarian;

(iv) that the veterinarian has personally examined the horse and made an accurate clinical diagnosis justifying the [~~clenbuterol~~] prescription;

(v) the proper dosage and route of administration; and

(vi) the expected duration of treatment; and

(C) only FDA-approved clenbuterol or albuterol that is labeled for use in the horse is prescribed and dispensed.

(2) [(3)] A horse that has been administered clenbuterol or albuterol under paragraph (1) [(2)] of this subsection shall be placed on the Veterinarian's List for a period ending not less than 30 days after the last administration of the drug as prescribed, subject to a negative test for clenbuterol, albuterol, or any other beta-agonist drug [~~test~~] before being removed from the list.

(A) In order to have a horse removed from the Veterinarian's List after being placed on the list pursuant to paragraph (1) [(2)] of this subsection, the trainer must contact a commission veterinarian to schedule a time and test barn location where the horse must be presented after the thirtieth day in order for a commission veterinarian to obtain test specimens to be submitted to the official laboratory for testing.

(B) (No change.)

(C) The collected specimens must not have any detectable level of clenbuterol, albuterol, or any other beta-agonist drug. If no detectable level of clenbuterol, albuterol, or any other beta-agonist drug is present, the horse shall be removed from the Veterinarian's List. If a detectable level of clenbuterol, albuterol, or any other beta-agonist drug is present, then the horse shall remain on the Veterinarian's List until such time that a test specimen reveals no detectable level of clenbuterol, albuterol, or any other beta-agonist drug.

(D) A horse placed on the Veterinarian's List pursuant to paragraph (1) [(2)] of this subsection may not be entered in a race until it has been removed from the list.

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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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER B. TREATMENT OF HORSES

### 16 TAC §319.102

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §319.102, Veterinarian's List. The proposed amendments would require that a horse participating in a workout or qualifying race for the purpose of being removed from the veterinarian's list have no detectable level of any permissible therapeutic medication other than furosemide.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be increased assurance that race animals working off the veterinarian's list are free of all medications that are not allowed on race day. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments expand existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules

to administer the Act, and §2034.001, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

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

§319.102. *Veterinarian's List.*

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

(d) Before removing a horse from the veterinarian's list, the commission veterinarian may require the horse to perform satisfactorily in a workout or qualifying race. Performance in such a workout or qualifying race must be conducted in accordance with §319.3 of this title (relating to Medication Restricted), except that, for a workout or qualifying race to be used for the purpose of removing a horse from the veterinarian's list, the horse must not have any detectable level of permissible therapeutic medication other than furosemide. The commission veterinarian may require the collection of test specimens from a horse after a workout or race required under this subsection. If a specimen is collected under this subsection, the commission veterinarian may not remove the horse from the veterinarian's list until the results of the test are negative.

(e) (No change.)

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

Filed with the Office of the Secretary of State on September 13, 2019.

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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER D. DRUG TESTING DIVISION 2. TESTING PROCEDURES

### 16 TAC §319.333

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §319.333, Specimen Tags. The proposed amendments would eliminate the specific requirements for specimen labeling for drug testing, requiring instead that specimens be marked for identification in a manner that ensures that the Commission can identify which horse, trainer, owners, and race the specimen came from and that the laboratory testing the sample cannot, leaving the specific labeling requirements to be outlined in the written test barn procedures.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be greater ability to adapt to packaging and procedural requirements, such as of drug testing laboratories, with regard to specimen processing while maintaining the integrity of samples. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

#### §319.333. *Specimen Identification [Tags].*

(a) Each specimen obtained for testing must be marked for identification in a manner that ensures that: [with a tag with multiple parts. A part of the tag must accompany the specimen to the testing laboratory and the commission veterinarian or test barn supervisor shall retain a part of the tag in a locked cabinet in the test barn or test area.]

(1) the commission can identify which horse, trainer, owner, and race the specimen came from; and

(2) the laboratory testing the sample cannot identify from the labeling on the specimen which horse, trainer, owner, or race the specimen came from.

(b) The executive director may issue standards for specimen identification in a manner that ensures the integrity of the specimens. [The part of the tag that is sent with the specimen to the laboratory may contain only the date the specimen was obtained and a unique identification number assigned by the executive secretary. The part of the tag that is retained in the test barn or test area must contain:]

{(1) the signature of the commission veterinarian or test barn supervisor;

{(2) the initials of each individual who collected the urine or serum;

{(3) the initials of the individual who processed the serum for split sampling;

{(4) the date the specimen was obtained;

{(5) the unique identification number;

{(6) the name of the race animal;

{(7) the signature of the witness, if any; and

{(8) any other information required by the executive secretary.]

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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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER C. REGULATION OF LIVE WAGERING

### DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

#### 16 TAC §321.313

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §321.313, Select Three, Four, or Five. This section establishes the select three, four, or five wager. The proposed amendments would require the stewards to declare races a "no contest" for select three, four, or five purposes when the conditions of a turf course warrant a change of racing surface in any race open to a select three, four, or five and the change was not made known to the public before the close of wagering for the first of the races.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be not counting wagers placed in the belief that a race would be run on turf in cases where the race was moved to dirt. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand or limit existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals

subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and Tex. Occ. Code §2027.001, which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

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

§321.313. *Select Three, Four, or Five.*

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

(j) When the condition of the turf course warrants a change of racing surface in any of the races open to a select three, four, or five, and such change has not been made known to the betting public prior

to the close of wagering for the first select three, four, or five race, the stewards shall declare each changed race a "no contest" for select three, four, or five purposes and the pool shall be distributed in accordance with subsection (i) of this section. Following the designation of a race as a "no contest," no tickets shall be sold selecting a horse in such "no contest" race.

(k) [(†)] In the event of a dead heat for win between two or more animals:

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

(l) [(\*)] A pari-mutuel ticket for the select three, four, or five pool may not be sold, exchanged, or canceled after the time wagering closes in the first of the races comprising the select three, four, or five, except for refunds on select three, four, or five tickets as required by subsection (h) of this section. A person may not disclose the number of tickets sold in the select three, four, or five pool or the number or amount of tickets selecting winners of select three, four, or five races until the stewards or racing judges have determined the last race comprising the select three, four, or five to be official.

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903278

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 833-6699



## SUBCHAPTER D. SIMULCAST WAGERING DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

### 16 TAC §321.509

The Texas Racing Commission ("the Commission") proposes the repeal of 16 TAC §321.509, Escrowed Purse Account. The repeal is proposed because the content of this section is proposed to be moved elsewhere in this issue into new Subchapter G of Chapter 303 in light of House Bill 2463 (86th Legislature, Regular Session, 2019), which changed the name of the account to "horse industry escrow account" and expanded its scope and funding.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for local or state government as a result of enforcing the repeal. Enforcing or administering the repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the repeal is in effect, the anticipated public benefit would be consolidation of these provisions with the rest of the rules



implementing House Bill 2463. There is no probable economic cost to persons required to comply with the repeal.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed repeal is in effect, the government growth impact is as follows: the repeal does not create or eliminate a government program; the repeal does not create any new employee positions or eliminate any existing employee positions; implementation of the repeal does not require an increase or decrease in future legislative appropriations to the agency; the repeal does not require an increase or decrease in fees paid to the agency; the repeal does not create a new regulation; the repeal does not expand or limit existing regulations; the repeal does not repeal existing regulations; the repeal does not increase or decrease the number of individuals subject to the rule's applicability; and the repeal does not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed repeal will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed repeal.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed repeal does not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed repeal will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed repeal will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed repeal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The repeal is proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

§321.509. *Escrowed Purse Account.*

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903288

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 833-6699



## TITLE 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

##### 22 TAC §153.3

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.3, The Board.

The TALCB Executive Committee recommends the proposed amendments to implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, requiring TALCB to develop a policy for allowing public comments at regular Board meetings. The proposed amendments to this section memorialize the existing policy for allowing public comments at regular Board meetings. Under the proposed amendments, a member of the public may comment on an agenda or non-agenda item at a regular quarterly meeting of the Board for up to 3 minutes. The proposed amendments also allow the Chair to extend this time at the Chair's discretion.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small

businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be increased transparency and better guidance and information for license holders and members of the public about TALCB's policy for public comments at regular quarterly Board meetings.

**Growth Impact Statement:**

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

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to member of the public and license holders about the time allowed for public comments at regular Board meetings.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under SB 624 to implement Texas Occupations Code §1103.161, which takes effect on September 1, 2019, and requires TALCB to develop and implement policies that provide members of the public a reasonable opportunity to appear and speak on agenda items at a regular Board meeting.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

*§153.3. The Board.*

- (a) A quorum of the Board consists of five members.
- (b) Meetings of the Board may be called by the chair on a motion by the chair or upon the written request of five members. Unless state law or Board rules require otherwise, meetings shall be conducted in accordance with Robert's Rules of Order.
- (c) At the end of a term, members shall continue to serve until their successors are qualified.
- (d) Public Comments at Regular Board Meetings.

(1) A member of the public may comment for up to three minutes on any agenda item or non-agenda item at a regular quarterly Board meeting.

(2) The Chair of the Board may extend the time for public comments at the Chair's discretion.

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

Filed with the Office of the Secretary of State on September 10, 2019.

TRD-201903200

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-3652



**22 TAC §153.5**

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.5, Fees.

The proposed amendments increase appraiser license application and renewal fees and eliminate other license holder fees to implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process and management directives from the Sunset Advisory Commission requiring TALCB to improve customer service, reduce complaint resolution time frames, limit fund growth and provide straightforward fee setting for license holders. The proposed amendments also clarify the consequences for submitting a payment that is dishonored.

Section 1103.051, Texas Occupations Code, established TALCB as an independent subdivision of the Texas Real Estate Commission (TREC). Chapter 1105, Texas Occupations Code, grants self-directed, semi-independent (SDSI) status to TALCB and TREC. As an SDSI agency, Chapter 1105 removes TALCB from the legislative appropriations process and requires TALCB to be responsible for all direct and indirect costs of TALCB's existence and operations. Thus, TALCB must generate sufficient revenue through the collection of fees to fund its entire budget and operations. The fees to be collected under the proposed amendments will allow TALCB to fund its operational costs to implement statutory changes enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process and management directives from the Sunset Advisory Commission.

The proposed amendments increase appraiser license application and renewal fees over a four-year period or two, two-year license cycles, starting January 1, 2020, while also exhausting \$1.016MM in reserves from the Customer Service Reserve over a three-year period starting January 1, 2020, to support the hiring of additional customer service, legal, and investigative staff and outsourcing commercial experience audits required under federal law for each license applicant to contract review appraisers as recommended by the TALCB Enforcement Committee and approved by TALCB in 2019. The proposed amendments also support hiring of an additional certified general appraiser investigator as recommended by the TALCB Enforcement Committee in August 2019. All remaining reserves from the Customer Service Reserve would be transferred over a three-year period

starting January 1, 2020, to support TALCB operations during the four-year transition to a fee structure that will sustain continued TALCB operations.

Hiring additional customer service staff will provide more resources to answer telephone calls and email inquiries from license holders and members of the public, thereby improving customer service by reducing telephone call hold times and email response times. Hiring additional legal and investigative staff and outsourcing commercial experience audits required under federal law to contract review appraisers as recommended by the TALCB Enforcement Committee will provide more resources to investigate and resolve complaints, thereby reducing complaint resolution time frames.

The proposed amendments also eliminate other license holder fees to simplify the overall fee structure, thereby reducing overall costs and providing greater transparency and straightforward fee setting for license holders.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be allowing TALCB to recover its operational costs as required in Chapter 1105, Texas Occupations Code, improved customer service, reduced complaint resolution time frames, and a simpler more transparent overall fee structure for license holders.

#### Growth Impact Statement:

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

- create or eliminate a government program;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.
- For each year of the first five years the proposed amendments are in effect, however, the amendments will require the creation of new employee positions and increase the overall fees paid to the agency.
- For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov).

The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.156, which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

#### §153.5. Fees.

(a) The Board shall charge and the Commissioner shall collect the following fees:

##### (1) Effective January 1, 2020:

(A) a fee of \$460 for an application for or timely renewal of a certified general appraiser license;

(B) a fee of \$385 for an application for or timely renewal of a certified residential appraiser license;

(C) a fee of \$345 for an application for or timely renewal of a licensed residential appraiser license; and

(D) a fee of \$250 for an application for or timely renewal of an appraiser trainee license;

~~{(1) a fee of \$400 for an application for a certified general appraiser license;}~~

##### (2) Effective January 1, 2022:

(A) a fee of \$560 for an application for or timely renewal of a certified general appraiser license;

(B) a fee of \$460 for an application for or timely renewal of a certified residential appraiser license;

(C) a fee of \$400 for an application for or timely renewal of a licensed residential appraiser license; and

(D) a fee of \$250 for an application for or timely renewal of an appraiser trainee license;

~~{(2) a fee of \$350 for an application for a certified residential appraiser license;}~~

~~{(3) a fee of \$325 for an application for a licensed residential appraiser license;}~~

~~{(4) a fee of \$300 for an application for an appraiser trainee license;}~~

~~{(5) a fee of \$360 for a timely renewal of a certified general appraiser license;}~~

~~{(6) a fee of \$310 for a timely renewal of a certified residential appraiser license;}~~

~~{(7) a fee of \$290 for a timely renewal of a licensed residential appraiser license;}~~

~~{(8) a fee of \$250 for a timely renewal of an appraiser trainee license;}~~

(3) [(9)] a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(4) [(10)] a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(5) [(11)] a fee of \$250 for nonresident license;

(6) ~~[(12)]~~ the national registry fee in the amount charged by the Appraisal Subcommittee;

(7) ~~[(13)]~~ an application fee for licensure by reciprocity in the same amount as the fee charged for a similar license issued to a Texas resident;

~~[(14) a fee of \$40 for preparing a certificate of licensure history, active licensure, or supervision;]~~

~~[(15) a fee of \$20 for an addition or termination of sponsorship of an appraiser trainee;]~~

~~[(16) a fee of \$20 for replacing a lost or destroyed license;]~~

~~[(17) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;]~~

(8) ~~[(18)]~~ a fee of \$200 for an extension of time to complete required continuing education;

~~[(19) a fee of \$25 to request a license be placed on inactive status;]~~

(9) ~~[(20)]~~ a fee of \$50 to request a return to active status;

(10) ~~[(21)]~~ a fee of \$50 for evaluation of an applicant's fitness ~~[moral character];~~

(11) ~~[(22)]~~ an examination fee as provided in the Board's current examination administration agreement;

~~[(23) a fee of \$20 per certification when providing certified copies of documents;]~~

(12) ~~[(24)]~~ a fee of \$75 to request a voluntary appraiser trainee experience review;

(13) ~~[(25)]~~ the fee charged by the Federal Bureau of Investigation, the Texas Department of Public Safety or other authorized entity for fingerprinting or other service for a national or state criminal history check in connection with a license application ~~[or renewal];~~

(14) ~~[(26)]~~ a base fee of \$50 for approval of an ACE course;

(15) ~~[(27)]~~ a content review fee of \$5 per classroom hour for approval of an ACE course;

(16) ~~[(28)]~~ a course approval fee of \$50 for approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency;

(17) ~~[(29)]~~ a one-time offering course approval fee of \$25 for approval of a 2-hour ACE course to be offered in-person only one time;

(18) ~~[(30)]~~ a fee of \$200 for an application for an ACE provider approval or subsequent approval; and

~~[(31) a fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and]~~

(19) ~~[(32)]~~ any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that ~~[check which]~~ has been dishonored ~~[returned]~~, and who have not made good on that payment ~~[check]~~ within 30 days, for whatever reason, must submit all replacement ~~[future]~~ fees in the form of a cashier's check, money order, or online credit card payment ~~[or money order]~~.

(c) Licensing fees are waived for members of the Board staff who must maintain a license for employment with the Board only and are not also using the license for outside employment.

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

Filed with the Office of the Secretary of State on September 10, 2019.

TRD-201903206

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-3652



## 22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.9, Applications.

The TALCB Executive Committee recommends the proposed amendments to provide clarity to applicants regarding licensing requirements related to military service members, veterans, and military spouses and implement statutory changes enacted by the 86th Legislature in SB 1200, which establish limited reciprocity for military spouses to practice in Texas, consistent with license reciprocity available under federal law.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be greater clarity in the rules, a more streamlined approach to licensing of military service members, veterans, and military spouses, and compliance with federal law and statutory changes enacted by the 86th Legislature, including requirements that are easier to understand, apply, and process.

### Growth Impact Statement:

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation; and  
--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

#### §153.9. Applications.

(a) A person desiring to be licensed as an appraiser or appraiser trainee shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

- (1) paid the required fees;
- (2) submitted a complete and legible set of fingerprints as required in §153.12 of this title;
- (3) satisfied any experience and education requirements established by the Act, Board rules, and the AQB;
- (4) successfully completed any qualifying examination prescribed by the Board;
- (5) provided all supporting documentation or information requested by the Board in connection with the application;
- (6) satisfied all unresolved enforcement matters and requirements with the Board; and
- (7) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Termination of application. An application is void and subject to no further evaluation or processing if within one year from the date an application is filed, an applicant fails to satisfy:

- (1) a current education, experience or exam requirement;
- or
- (2) the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal or Extension of Certification and License or Renewal of Trainee Approval).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years after the date of the Board's notice of denial as required in §157.7 of this title.

(g) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(h) ~~(g)~~ This subsection applies to an applicant who is a military service member, ~~[a military]~~ veteran, or ~~military~~~~[the]~~ spouse ~~[of a person serving on active duty as a member of the armed forces of the United States]~~.

(1) The Board will process an application under this subsection on an expedited basis.

(2) If an applicant under this subsection holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state, the Board will:

(A) Waive the license application and examination fees; and

(B) Issue the license as soon as practicable after receipt of the application.

~~{(1) The Board shall waive the license application and examination fees for an applicant who is:}~~

~~{(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or}~~

~~{(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.}~~

~~{(2) The Board shall issue on an expedited basis a license to an applicant who holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state.}~~

(3) The Board may reinstate a license previously held by an applicant, if the applicant satisfies the requirements in §153.16 of this chapter.

(4) The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(5) In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the commissioner.

(i) ~~[(h)]~~ This subsection applies to an applicant who is a military service member [serving on active duty] or [is a] veteran [of the armed forces of the United States].

(1) The Board will waive the license application and examination fees for an applicant under this subsection whose military service, training or education substantially meets all of the requirements for a license.

(2) [(4)] The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(3) [(2)] This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(4) [(3)] The applicant must pass the qualifying examination, if any, for the type of license sought.

(5) [(4)] The Board will evaluate applications filed under this subsection [by an applicant who is serving on active duty or is a veteran of the armed forces of the United States] consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(j) This subsection applies to an applicant who is a military spouse. The Board will waive the license application fee and issue a license by reciprocity to an applicant who wants to practice in Texas in accordance with 55.0041, Occupations Code, if:

(1) the applicant submits:

(A) an application to practice in Texas on a form approved by the Board;

(B) proof of the applicant's Texas residency; and

(C) a copy of the applicant's military identification card;  
and

(2) the Board verifies that the military spouse is currently licensed and in good standing with the other state or jurisdiction.

(k) [(4)] Except as otherwise provided in this section, a [A] person applying for license under subsection ~~[(g) or]~~ (h), (i) or (j) of this section must also:

(1) submit the Board's approved application form for the type of license sought;

(2) pay the required fee for that application; and

(3) submit the supplemental form approved by the Board applicable to subsection ~~[(g) or]~~ (h), (i) or (j) of this section.

(l) [(j)] The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB.

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

Filed with the Office of the Secretary of State on September 10, 2019.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-3652



## 22 TAC §153.17

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.17, License Renewal.

The TALCB Enforcement Committee recommends the proposed amendments to implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, allowing TALCB to deny a license renewal if a license holder is in violation of a TALCB Order.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply, and process.

Growth Impact Statement:

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's econ-

omy as the proposed amendments would simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under SB 624 to implement Texas Occupations Code §1103.214, which takes effect on September 1, 2019, and allows TALCB to deny a license renewal if a license holder is in violation of a TALCB order.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

§153.17. *License Renewal.*

(a) General Provisions.

(1) The Board will send a renewal notice to the license holder at least 90 days prior to the expiration of the license. It is the responsibility of the license holder to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(2) A license holder renews the license by timely filing an application for renewal, paying the appropriate fees to the Board, and satisfying all applicable education, experience, fingerprint and criminal history check requirements.

(3) To renew a license on active status, a license holder must complete the ACE report form approved by the Board and, within 20 days of filing the renewal application, submit course completion certificates for each course that was not already submitted by the education provider and reflected in the license holder's electronic license record.

(A) The Board may request additional verification of ACE submitted in connection with a renewal. If requested, such documentation must be provided within 20 days after the date of request.

(B) Knowingly or intentionally furnishing false or misleading ACE information in connection with a renewal is grounds for disciplinary action up to and including license revocation.

(4) An application for renewal received by the Board is timely and acceptable for processing if it is:

(A) complete;

(B) accompanied with payment of the required fees; and

(C) postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the Board's online processing system on or before the date of expiration.

(b) ACE Extensions.

(1) The Board may grant, at the time it issues a license renewal, an extension of time of up to 60 days after the expiration date of the previous license to complete ACE required to renew a license, subject to the following:

(A) The license holder must:

(i) timely submit the completed renewal form;

(ii) complete an extension request form; and

(iii) pay the required renewal and extension fees.

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license.

(C) A person whose license was renewed with a 60-day ACE extension:

(i) will be designated as non-AQB compliant on the National Registry and will not perform appraisals in a federally related transaction until verification is received by the Board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions under the renewed license;

(iii) must, within 60 days after the date of expiration of the previous license, complete the approved ACE report form and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) will have the renewed license placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner indicated in paragraph (2) of this subsection. The renewed license will remain on inactive status until satisfactory evidence of meeting the ACE requirements has been received by the Board and the fee to return to active status required by §153.5 of this title (relating to Fees) has been paid.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

(c) Renewal of Licenses for Persons on Active Duty. A person who is on active duty in the United States armed forces may renew an expired license without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(1) did not provide appraisal services while on active duty;

(2) provides a copy of official orders or other documentation acceptable to the Board showing the person was on active duty during the last renewal period;

(3) applies for the renewal within two years after the person's active duty ends;

(4) pays the renewal application fees in effect when the previous license expired; and

(5) completes ACE requirements that would have been imposed for a timely renewal.

(d) Late Renewal. If an application is filed within six months of the expiration of a previous license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous license.

(e) Denial of Renewal. The Board may deny an application for license renewal if the license holder is in violation of a Board order.

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

Filed with the Office of the Secretary of State on September 10, 2019.

TRD-201903202



## 22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.19, Licensing for Persons with Criminal History and Moral Character Determination.

The TALCB Enforcement Committee recommends the proposed amendments to implement statutory changes to Chapter 53, Occupations Code, enacted by the 86th Legislature in HB 1342 and SB 1217 regarding the requirements for evaluating criminal convictions and arrests of license applicants and license holders, and statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624, as part of the Sunset Review process.

After considering the factors identified by the Legislature in HB 1342, the proposed amendments revise the list of crimes that TALCB has determined to be directly related to the duties and responsibilities of the licensed occupations of certified general appraiser, certified residential appraiser, licensed residential appraiser, and appraiser trainee. The proposed amendments also conform the remaining provisions of this section to the statutory changes enacted by the Legislature in HB 1342 and SB 1217 and substitute the term "fitness" for the phrase "moral character" to conform this section to the statutory changes enacted by the Legislature in SB 624.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statutes and easier to understand, apply, and process.

### Growth Impact Statement:

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

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

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

*§153.19. Licensing for Persons with Criminal History and Fitness [Moral Character] Determination.*

(a) No currently incarcerated individual is eligible to obtain or renew a license. A person's license will be revoked upon the person's incarceration [~~imprisonment~~] following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

(b) The Board may suspend or revoke an existing valid license, disqualify an individual from receiving a license, deny to a person the opportunity to be examined for a license or deny any application for a license, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked, or had their mandatory supervision revoked. Any such action may be taken [~~shall be made~~] after consideration of the required factors [~~detailed~~] in Chapter 53, [Texas] Occupations Code, [~~§§53.022~~] and [~~subsection (d) of~~] this section.

(c) A license holder must conduct himself or herself with honesty, integrity, and trustworthiness. After considering the required factors in Chapter 53, Occupations Code, [Thus,] the Board determines that a conviction or deferred adjudication deemed a conviction under Chapter 53, Occupations Code, of [has considered the factors in Texas Occupations Code §53.022 and deems] the following crimes to be directly related to the duties and responsibilities of a certified general or certified residential [~~occupation of~~] appraiser, a licensed appraiser or appraiser trainee:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another; [~~if committed knowingly or intentionally~~];
- (3) offenses against public administration, including tampering with a government record, witness tampering, perjury, bribery, and corruption;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law; and
- {(5) offenses involving moral turpitude; and}
- (5) [(6)] offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining whether a conviction of a criminal offense not listed in subsection (a) of this section directly relates to the



duties and responsibilities of a licensed occupation regulated by the Board, the Board considers:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(e) [(d)]When [H] determining the present fitness of an applicant or license holder who has been convicted of a crime, the Board also considers [will consider the following evidence]:

- (1) the extent and nature of the person's past criminal activity;
- (2) the person's age at the time the crime was committed [of the commission of the crime];
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the person's conduct and work activity before and after [prior to and following] the criminal activity;
- (5) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;
- (6) [(5)]evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (7) [(6)]other evidence of the applicant's or license holder's present fitness including letters of recommendation. [from:]

[(A) prosecution, law enforcement, and correctional officers who prosecuted,] arrested, or had custodial responsibility;

[(B) the sheriff and chief of police in the community where the applicant or license holder resides; and]

[(C) any other person in contact with the applicant or license holder.]

[(e) It shall be the responsibility of the applicant or license holder to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has supported his or her dependents and otherwise maintained a record of good conduct, and is current on the payment of all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the person has been convicted.]

(f) To the extent possible, it is the applicant's or license holder's responsibility to obtain and provide the recommendations described in subsection (e)(7) of this section.

(g) When determining a person's fitness to perform the duties and discharge the responsibilities of a licensed occupation regulated by the Board, the Board does not consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

(h) [(f)]Fitness [Moral Character] Determination. Before applying for a license, a person may request the Board to determine if the prospective applicant's fitness [moral character] satisfies the Board's requirements for licensing by submitting the request form approved by the Board and paying the required fee. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for a license.

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

Filed with the Office of the Secretary of State on September 10, 2019.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-3652



## 22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The TALCB Enforcement Committee recommends the proposed amendments to implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, requiring TALCB to protect a complainant's identity to the extent possible by excluding the complainant's identifying information when sending a complaint notice to a respondent; requiring TALCB to send periodic written notice of the status of a complaint to the complainant and each respondent until final resolution of the complaint; and authorizing TALCB to order refunds to consumers of appraisal services in certain limited circumstances. The proposed amendments also correct a typographical error and insert a missing space in subsection (m)(3) of this section, as amended.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, neither an Economic Impact Statement nor a Regulatory Flexibility Analysis are required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be increased transparency and better guidance and information for license holders and the public about TALCB's investigative processes.

Growth Impact Statement:

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

--create or eliminate a government program;

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under SB 624 to implement Texas Occupations Code §§1103.163, .460(d-1), and .5526, which take effect on September 1, 2019, and require TALCB to send periodic written notice to complainants and respondents; protect the complainant's identity to the extent possible by excluding a complainant's identifying information in the notice of complaint sent to a respondent; and allow TALCB to order refunds to consumers of appraisal services in limited circumstances.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

§153.24. *Complaint Processing.*

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

- (1) assign the complaint a case number in the complaint tracking system; and
- (2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

- (1) evidence serious deficiencies, including:
  - (A) Fraud;
  - (B) Identity theft;
  - (C) Unlicensed activity;
  - (D) Ethical violations;
  - (E) Failure to properly supervise an appraiser trainee;

or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

- (2) were done:

- (A) with knowledge;
- (B) deliberately;
- (C) willfully; or
- (D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall be dismissed with no further processing. The Board or the commissioner may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) shall be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(f) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) [(g)] The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

- (1) a copy of the appraisal report that is the subject of the complaint;
- (2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT) ;

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) [(h)] Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) [(t)] of this section, the complaint shall be dismissed with no further processing.

(j) [(i)] A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (i) [(h)] of this section; or

(2) staff opens a formal complaint on its own motion.

(k) [(j)] Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) [(k)] The staff investigator or peer investigative committee assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division.

(m) [(l)] In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If the Respondent completes all remedial measures required in the agreement within the prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;

or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

- (i) Contingent dismissal with remedial measures; or
- (ii) A final order which imposes one or more of the following:

following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were

done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;
- (v) A probationary period with provisions for monitoring the Respondent's practice;
- (vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;
- (vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or
- (viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;
- (v) A probationary period with provisions for monitoring the Respondent's practice;
- (vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;
- (vii) Restrictions on the scope of practice the Respondent's is allowed to engage in for a specified time period or until specified conditions are satisfied; or
- (viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;
- (v) A probationary period with provisions for monitoring the Respondent's practice;
- (vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; or
- (ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

- (i) A revocation; and
- (ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

- (A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph(2) of this subsection;
- (B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;
- (C) requiring additional reporting requirements; and
- (D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(n) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(o) ~~[(m)]~~ Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

- (1) the Board Chair;
- (2) Respondent;
- (3) a representative of the Standards and Enforcement Services Division; and
- (4) the Commissioner.

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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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



## CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

### SUBCHAPTER F. NEGOTIATED RULEMAKING

#### 22 TAC §157.50

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC §157.50, Negotiated Rulemaking.

The TALCB Executive Committee recommends this proposed new section to implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, requiring TALCB to develop a policy to encourage the use of negotiated rulemaking. The proposed new section sets forth TALCB's policy for negotiated rulemaking.

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

Ms. Worman has also determined that for each year of the first five years the proposed new section and rules are in effect the public benefits anticipated as a result of enforcing the proposed new section will be clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply, and process.

#### Growth Impact Statement:

For each year of the first five years the proposed new section and rules are in effect the new section and rules will not:

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

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed new section is in effect, there is no anticipated impact on the state's economy as the proposed new section would simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

Comments on the proposed new section may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under SB 624 to implement Texas Occupations Code §1103.162, which takes effect on September 1, 2019, and requires TALCB to develop and implement a policy to encourage the use of negotiated rulemaking.

The statutes affected by this proposed new section are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code, or article is affected by the proposed new section.

#### §157.50. Negotiated Rulemaking.

(a) It is the Board's policy to employ negotiated rulemaking procedures when appropriate. When the Board is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the Board will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Government Code §2008.052 and shall make a recommendation to the Commissioner to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Government Code §2008.052(c).

(c) Upon the convener's recommendation to proceed, the Board shall initiate negotiated rulemaking according to the provisions of Chapter 2008, Government Code.

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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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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## CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

#### 22 TAC §159.52

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.52, Fees.

The proposed amendments eliminate certain fees to license holders to implement statutory changes enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process and management directives from the Sunset Advisory Commission to limit fund growth and provide straightforward fee setting for license holders. The proposed amendments also implement a fee for untimely payment of AMC National Registry Fees to support collection and enforcement of AMC National Registry fees as required under federal law and conform the language in this section regarding deposit of the AMC Registry Fees to the language in Chapter 1104, Occupations Code. The proposed amendments also clarify the consequences for providing a dishonored form of payment.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be improved transparency, reduced costs to license holders, and clarity for license holders regarding the consequences for untimely payment of AMC National Registry Fees and the processes to address dishonored payments.

#### Growth Impact Statement:

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

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

For each year of the first five years the proposed amendments are in effect, the amendments will, however, decrease the required fees paid to the agency.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1104.051 and 1104.052, which authorize TALCB to adopt

rules necessary to administer Chapter 1104, Texas Occupations Code, and to establish sufficient fees for the administration of Chapter 1104, Occupations Code.

The statute affected by these proposed amendments is Chapter 1104, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

#### §159.52. Fees.

(a) The Board will charge and the Commissioner will collect the following fees:

- (1) a fee of \$3,300 for an application for a two-year registration;
- (2) a fee of \$3,000 for a timely renewal of a two-year registration;
- (3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;
- (4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC registry;
- (5) a fee of \$500 for untimely payment of the AMC national registry fee;
- (6) ~~[(5)]~~ a fee of \$10 for each appraiser on a panel at the time of renewal of a registration;
- (7) ~~[(6)]~~ a fee of \$5 to add an appraiser to a panel in the Board's records;
- (8) ~~[(7)]~~ a fee of \$5 for the termination of an appraiser from a panel;
- ~~[(8) a fee of \$25 to request a registration be placed on inactive status;]~~
- (9) a fee of \$50 to return to active status;
- ~~[(10) a fee of \$40 for preparing a certificate of licensure history or active licensure;]~~
- ~~[(11) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;]~~
- ~~[(12) a fee of \$20 for filing any request to change an owner, primary contact, appraiser contact, registered business name or place of business;]~~
- (10) ~~[(13)]~~ a fee of \$50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;
- ~~[(14) a fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online;]~~
- (11) ~~[(15)]~~ any fee required by the Department of Information Resources for establishing and maintaining online applications; and
- (12) ~~[(16)]~~ a fee in the amount necessary to administer section 1104.052(c) of the AMC Act.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that [check which] has been dishonored [returned], and who have not made good on that payment [check]

within 30 days, for whatever reason, must submit all replacement [future] fees in the form of a cashier's check, money order, or online credit card payment [or money order].

(c) AMCs registered with the Board must pay any annual registry fee as required under federal law. All registry fees collected by the Board will be deposited to the credit of the appraiser registry account in the general revenue fund [in the Texas Treasury Safekeeping Trust Company to the credit of the appraiser registry fund]. The Board will send the fees to the Appraisal Subcommittee as required by federal law.

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

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



## 22 TAC §159.108

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.108, Renewal.

The TALCB Executive Committee recommends the proposed amendments to implement statutory changes to Chapter 1104, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, allowing TALCB to deny a license renewal if a license holder is in violation of a TALCB Order. The proposed amendments also reorganize this section to provide clarity to members of the public and license holders.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply, and process.

Growth Impact Statement:

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code, and SB 624 to implement Texas Occupations Code §1104.105(a-1), which takes effect on September 1, 2019, and allows TALCB to deny a license renewal if a license holder is in violation of a TALCB order.

The statute affected by these proposed amendments is Chapter 1104, Texas Occupations Code.

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

§159.108. *Renewal.*

(a) Renewal Notice.

(1) The Board will send a renewal notice to the license holder's primary contact at least 90 days prior to the expiration of the license.

(2) Failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(b) Application for Renewal. To renew a license, a license holder must:

(1) submit an application as required by §1104.103 of the AMC Act; and

(2) pay all applicable renewal fees established in §159.52 of this chapter.

(3) It is the responsibility of the license holder to apply for renewal in accordance with this section sufficiently in advance of the expiration date to ensure that all renewal requirements, including background checks, are satisfied before the expiration date of the license.

(4) An application for renewal is not complete, and no renewal will issue, until all application requirements are satisfied.

(c) Denial of Renewal. The Board may deny an application for license renewal if the license holder is in violation of a Board order.

{(e) It is the responsibility of the license holder to apply for renewal in accordance with this section sufficiently in advance of the



expiration date to ensure that all renewal requirements, including background checks, are satisfied before the expiration date of the license.]

~~[(d) Failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.]~~

~~[(e) An application for renewal is not complete, and no renewal will issue, until all application requirements are satisfied.]~~

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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Kristen Worman

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## 22 TAC §159.110

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC §159.110, AMC National Registry.

The TALCB Executive Committee recommends this proposed new section to implement collection and enforcement of AMC National Registry Fees as required under federal law and provide clarity to members of the public and license holders about the procedural requirements for collecting these fees.

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

Ms. Worman has also determined that for each year of the first five years the proposed new section is in effect the public benefits anticipated as a result of enforcing the proposed new section will be clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with federal law and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed new section is in effect the new section will not:

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

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed new section is in effect, there is no anticipated impact on the state's economy as the proposed new section will simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

Comments on the proposed new section may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statute affected by this proposed new section is Chapter 1104, Texas Occupations Code.

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

*§159.110. AMC National Registry.*

(a) For purposes of this rule, the term "AMC" includes each AMC registered with the Board under Chapter 1104, Occupations Code, including AMCs with an active or inactive license status, and each federally regulated AMC operating in this state.

(b) An AMC must provide information to the Board and pay the required AMC Registry Fee on an annual basis.

(c) The Board will send notice to each AMC regarding payment of AMC Registry Fees on or before November 1st of each calendar year.

(d) On or after January 1st and before March 31st of the calendar year following the issuance of notice under subsection (c), each AMC must:

(1) Submit the information required to determine the applicable AMC Registry Fee; and

(2) Pay the applicable AMC Registry Fee.

(e) The Board will transmit the information collected from each AMC to the Appraisal Subcommittee for inclusion on the AMC National Registry as required by federal law.

(f) Failure to receive notice from the Board regarding annual payment of AMC Registry Fees does not relieve an AMC from submitting the required information and paying the applicable AMC Registry Fee in a timely manner as required in this section.

(g) Failure to submit the required information and pay the applicable AMC Registry Fee in a timely manner as required in this section is a violation of this rule that may result in:

(1) Assessment of a late fee; and

(2) Disciplinary action, up to and including license revocation.

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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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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## 22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing.

The TALCB Executive Committee recommends the proposed amendments to implement statutory changes to Chapter 1104, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, requiring TALCB to protect a complainant's identity to the extent possible by excluding the complainant's identifying information when sending a complaint notice to a respondent; requiring TALCB to send periodic written notice of the status of a complaint to the complainant and each respondent until final resolution of the complaint; and authorizing TALCB to order refunds to consumers of appraisal services in certain limited circumstances.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be increased transparency and better guidance and information for license holders and the public about TALCB's investigative processes.

### Growth Impact Statement:

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

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code, and under SB 624 to implement Texas Occupations Code §§1103.163 and .5526, and 1104.2082(e-1), which take effect on September 1, 2019, and require TALCB to send periodic written notice to complainants and respondents; protect the complainant's identity to the extent possible by excluding a complainant's identifying information in the notice of complaint sent to a respondent; and allow TALCB to order refunds to consumers of appraisal services in limited circumstances.

The statutes affected by these proposed amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

### §159.204. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

- (1) assign the complaint a case number in the complaint tracking system; and
- (2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

- (1) evidence serious deficiencies, including:
  - (A) Fraud;
  - (B) Identity theft;
  - (C) Unlicensed activity;
  - (D) Ethical violations;
  - (E) Violations of appraiser independence; or
  - (F) Other conduct determined by the Board that poses a significant risk of public harm; and
- (2) were done:
  - (A) with knowledge;
  - (B) deliberately;
  - (C) willfully; or
  - (D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Commissioner may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) will be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) [(g)] The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) [(h)] Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act, Board rules or USPAP exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection

(m) [(4)] of this section, the complaint will be dismissed with no further processing.

(j) [(h)] A formal complaint will be opened and investigated by a staff investigator or peer investigative committee if:

(1) the informal complaint is not dismissed under subsection (i) [(h)] of this section; or

(2) staff opens a formal complaint on its own motion.

(k) [(j)] Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) [(k)] The staff investigator or peer investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

(m) [(4)] In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) "Minor deficiencies" is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If Respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

- (i) Whether it concerned the same or similar violations or facts;
  - (ii) The nature of the disciplinary sanctions imposed;
  - (iii) The length of time since the previous discipline;
  - (D) The difficulty or complexity of the incident at issue;
  - (E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;
  - (F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;
  - (G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:
    - (i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;
    - (ii) The Board;
    - (iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;
    - (iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;
    - (v) A consumer contemplating a real property transaction involving the consumer's principal residence;
  - (H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;
  - (I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;
  - (J) The business operating history of the AMC, including:
    - (i) The size of the AMC's appraiser panel;
    - (ii) The length of time Respondent has been licensed as an AMC in Texas;
    - (iii) The length of time the AMC has been conducting business operations, in any jurisdiction;
    - (iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and
    - (v) Respondent's affiliation with other business entities;
  - (K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and
  - (L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.
- (3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

- (A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:
  - (i) Dismissal;
  - (ii) Dismissal with non-disciplinary warning letter;
  - (iii) Contingent dismissal with remedial measures.
- (B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:
  - (i) Contingent dismissal with remedial measures;
  - (ii) A final order which imposes one or more of the following:
    - (I) Remedial measures;
    - (II) Required adoption and implementation of written, preventative policies or procedures;
    - (III) A probationary period with provisions for monitoring the AMC;
    - (IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
    - (V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
    - (VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.
- (C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:
  - (i) A period of suspension;
  - (ii) A revocation;
  - (iii) Remedial measures;
  - (iv) Required adoption and implementation of written, preventative policies or procedures;
  - (v) A probationary period with provisions for monitoring the AMC;
  - (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
  - (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
  - (viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.
- (D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:
  - (i) Dismissal;
  - (ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;  
(iv) A final order which imposes one or more of the following:

(I) Remedial measures;  
(II) Required adoption and implementation of written, preventative policies or procedures;  
(III) A probationary period with provisions for monitoring the AMC;  
(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;  
(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;  
(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;  
(ii) A revocation;  
(iii) Remedial measures;  
(iv) Required adoption and implementation of written, preventative policies or procedures;  
(v) A probationary period with provisions for monitoring the AMC;  
(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;  
(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;  
(ii) A revocation;  
(iii) Remedial measures;  
(iv) Required adoption and implementation of written, preventative policies or procedures;  
(v) A probationary period with provisions for monitoring the AMC;  
(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;  
(ii) A revocation;  
(iii) Remedial measures;  
(iv) Required adoption and implementation of written, preventative policies or procedures;  
(v) A probationary period with provisions for monitoring the AMC;  
(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;  
(ii) A revocation;  
(iii) Remedial measures;  
(iv) Required adoption and implementation of written, preventative policies or procedures;  
(v) A probationary period with provisions for monitoring the AMC;  
(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and  
(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board

Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(n) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(o) ~~[(m)]~~ Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.208(a)(3) must be signed by:

(1) The Board Chair;

(2) Respondent;

(3) A representative of the Standards and Enforcement Services Division; and

(4) The Commissioner.

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

Filed with the Office of the Secretary of State on September 10, 2019.

TRD-201903197

Kristen Worman  
General Counsel

Texas Appraiser Licensing and Certification Board  
Earliest possible date of adoption: October 27, 2019  
For further information, please call: (512) 936-3652



## PART 10. TEXAS FUNERAL SERVICES COMMISSION

### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

#### SUBCHAPTER A. LICENSING

##### 22 TAC §203.16

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter A, Licensing, Rule §203.16, Consequences of Criminal Conviction.

**BACKGROUND AND JUSTIFICATION.** In 2019, the 86th Texas Legislature enacted HB 1342 and SB 1217 which enacted changes to Chapters 51 and 53, Texas Occupations Code. The legislation updated the statute as it relates to how licensing agencies issue or deny licenses to people with a past criminal conviction or deferred adjudication. This proposal updates the Commission's rule to ensure compliance with the legislative changes.

##### SECTION BY SECTION SUMMARY

Subsection (a) is amended to comply with HB 1342 by removing the authorization for the Commission to consider an offense not directly related to the occupations of funeral directing and/or embalming that was committed less than five years before the person applies for the license.

New subsection (b) is added to comply with SB 1217 by prohibiting the Commission from considering arrests that did not result in a conviction or deferred adjudication.

Existing subsection (b) is re-lettered as subsection (c).

Subsection (c) is re-lettered as subsection (d) and is amended to comply with HB 1342, which requires written notice of the basis for the intended denial, suspension, or revocation.

Subsection (d) is re-lettered as subsection (e).

Subsection (e) is re-lettered as subsection (f). This subsection is amended to clarify that the Commission must consider each of the enumerated factors outlined in Chapter 53 of the Texas Occupations Code in its assessment of an application and determine if those factors directly relate to the duties and responsibilities of the licensed occupation. An additional factor is added in compliance with HB 1342 which requires the Commission to consider any correlation between the elements of a crime and the duties and responsibilities of the licensed occupation. The amendment also corrects a minor grammatical error.

Subsection (f) is re-lettered as subsection (g). This subsection is amended to clarify that the Commission must determine if a crime directly relates to the licensed profession before taking action on a license or application for a license. It complies with HB 1342 by striking the language requiring the Commission to (1) assess the fitness of a person; and (2) consider letters of recommendation from prosecutors and law enforcement and correctional officers.

Subsection (g) is repealed which allowed the Commission to ask an applicant to furnish proof of the applicant's employment history, support of dependents, good conduct, and payment of required court costs and required fees, fines, and restitution.

Subsection (h) is amended to add that the enumerated crimes directly relate to the licensed occupation, in compliance with the changes enacted by HB 1342.

Subsection (k) is added to require the Commission, prior to taking action against a licensee or applicant, provide written notice that includes a statement that (1) a final decision on the license will be based on the factors outlined in subsections (f) or (g) and (2) the person has the responsibility to provide evidence regarding those factors in compliance with changes enacted by HB 1342. The notice must allow the person no less than 30 days to provide the evidence.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Janice McCoy, Executive Director, has determined for the first five-year period the amendments are in effect there will be no fiscal implication for local governments, or local economies and no state fiscal impact.

Because there is no effect on local economies for the first five years the proposed amendments are in effect, no local employment impact statement is required by Texas Government Code §2001.022.

**PUBLIC BENEFIT/COST NOTE.** Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit is that the agency's rules will comply with HB 1342 and SB 1217, which relate to how the Commission must review the criminal backgrounds of applicants and licensees. There will not be any new economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rules only further define and clarify statute.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** Ms. McCoy has determined that there will be no adverse economic effect on small or micro-businesses or rural communities because there are no new costs on individuals due to the amendments. As a result, the preparation of an economic impact statement and regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amendments will not require an increase in fees paid to the agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments do limit existing regulations related to how the agency reviews criminal history to the benefit of individuals; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed amendments will neither positively nor negatively affect this state's economy.

**ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.** Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost

imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

**TAKINGS IMPACT ASSESSMENT:** Ms. McCoy has determined that no private real property interests are affected by the proposal and the proposal does not restrict, limit, or impose a burden on an owner's right to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.0043.

**ENVIRONMENTAL RULE ANALYSIS:** Ms. McCoy has determined this proposal is not brought with the specific intent to protect the environment to reduce risks to human health from environmental exposure and asserts this proposal is not a major environmental Rule as defined by Government Code §2001.0225. As a result, an environmental impact analysis is not required.

**PUBLIC COMMENT:** Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than thirty (30) days after the date of publication of this proposal in the *Texas Register*.

**STATUTORY AUTHORITY:** This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code Chapter 53 which outlines how a licensing agency may review criminal backgrounds of applicants and licensees in accordance with changes made when the 86th Texas Legislature enacted HB 1342 and SB 1217; and (3) the authority of the Commission to issue licenses pursuant to Texas Occupations Code §§651.251-253.

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

*§203.16. Consequences of Criminal Conviction.*

(a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651). [~~The Commission may consider an offense not listed as directly related to the occupations of funeral directing and/or embalming that was committed less than five years before the person applies for the license.~~]

(b) The Commission may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

(c) [(b)] The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(d) [(e)] If the Commissioners suspend or revoke a license or deny a person from getting a license, the Commission must notify the person of the decision in writing. That notice must explain any factor(s) considered under subsection (f) or (g) of this section that served as the basis for the action and notify the licensee or applicant he or she has the right to appeal that decision to SOAH.

(e) [(d)] The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.

(f) [(e)] The Commission shall consider each of the following factors in determining what crimes [whether a criminal conviction] directly relates [relate] to the duties and responsibilities of an occupation required to be licensed under [by] Chapter 651, and therefore are included in subsection (h) of this section:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupations of funeral directing and/or embalming;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as [that in which] the person previously had been involved; [and]
- (4) the relationship of the crime to the ability, or capacity[, or fitness] required to perform the duties and discharge the responsibilities of the licensed occupation; and[-]
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(g) [(f)] If the person has been convicted of a crime enumerated under subsection (h) of this section or a crime that otherwise directly relates to the duties and responsibilities of the occupation required to be licensed under Chapter 651, [a person has been convicted of a crime,] the Commission shall consider the following in determining whether to take action authorized by Texas Occupations Code Section 53.021 against a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; [and]
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- (7) [(6)] other evidence of the person's fitness including letters of recommendation. [from:]

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

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

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

[(g) The applicant may be asked to furnish proof that the applicant has:]

- [(1) maintained a record of steady employment;]

[(2) supported the applicant's dependents;]

[(3) maintained a record of good conduct; and]

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

(h) The following crimes are directly related to the occupations of funeral directing or embalming:

(1) Class B misdemeanors classified by Occupations Code §651.602:

(A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;

(B) making a first call in a manner that violates Occupations Code §651.401;

(C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or

(D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation;

(2) the commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead;

(3) an offense listed in Article 42A.054, Code of Criminal Procedure as provided by Occupations Code §53.021(3);

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure as provided by Occupations Code §53.021(4);

(5) the following crimes because these acts indicate a lack of respect for human life and dignity:

- (A) Murder;
- (B) Assault;
- (C) Sexual Assault;
- (D) Kidnapping;
- (E) Injury to a Child;
- (F) Injury to an Elderly Person;
- (G) Child Abuse;
- (H) Harassment; or
- (I) Arson;

(6) the following crimes because these acts indicate a lack of principles needed to practice funeral directing and/or embalming:

- (A) Robbery;
- (B) Theft;
- (C) Burglary;
- (D) Forgery;
- (E) Perjury;
- (F) Bribery;
- (G) Tampering with a governmental record; or
- (H) Insurance claim fraud; and



(7) the following crimes because these acts indicate a lack of fitness to practice funeral directing and/or embalming:

(A) delivery, possession, manufacture or use of or the illegal dispensing of a controlled substance, dangerous drug, or narcotic; or

(B) multiple (more than two) convictions for driving while intoxicated or driving under the influence.

(i) Multiple violations of any criminal statute shall be reviewed by the Commission because multiple violations may reflect a pattern of behavior that renders the applicant unfit to hold a funeral director's and/or embalmer's license.

(j) The Commission may not consider a person to be convicted of an offense if the judge deferred further proceedings without entering an adjudication of guilt, placed the person on community supervision, and dismissed the proceedings at the end of the community supervision. However, if the Commission determines that the licensure of the person as a funeral director and/or embalmer would create a situation in which the person has the opportunity to repeat the prohibited conduct, the Commission shall consider a person to have been convicted regardless of whether the proceedings were dismissed after a period of deferred adjudication if:

(1) the person was charged with any offense described by Article 62.001(5) Code of Criminal Procedure;

(2) the person has not completed the term of community supervision or the person completed the period of supervision less than five years before the date of application; or

(3) a conviction of the offense would make the person ineligible for the license by operation of law.

(k) Prior to taking action against a person as authorized by Texas Occupations Code §53.021, the Commission shall provide written notice to the person that includes a statement that the final decision of the Commission will be based on factors listed under subsection (f) or (g) of this section and the person has the responsibility to provide evidence regarding those factors. The notice shall allow the person no less than 30 days from receiving the notice to submit any relevant evidence or information.

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903284

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 936-2469



## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 273. GENERAL RULES

#### 22 TAC §§273.4, 273.8, 273.14

The Texas Optometry Board proposes amendments to §§273.4, 273.8, and 273.14, primarily to set license renewal fees and implement Senate Bill 314, Regular Session, 85th Legislature,

which authorized the Board to renew licenses for a two year period instead of the current one year period. Rule §273.4 amendments set fees for license renewal. The amendments to the fees will fund the agency's required contribution to the costs of the Prescription Monitoring Program as required by House Bill 1, Regular Session, 86th Legislature, Article VIII, §7 and Article IX, §§18.30 and 18.36. License fees are amended to correspond to the two year period without an increase year-to-year. Late renewal fees are also adjusted according to statute. The retired license for charity work renewal fee has been reduced under the authority of Texas Occupations Code §112.051. The included fee for lists of optometrists is unchanged from the normal charge and the fee for official verifications has been increased to offset increased costs. Language regarding fees for FBI criminal history requests is unnecessary and has been removed.

Rule §273.8 amendments also clarify that written notice of the impending license expiration may be "sent" rather than the current language of "mailed." Rule §273.14 amendments also implement Senate Bill 1200, 86th Legislature, which provides an alternative process for licensing a military spouse.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments to renewal fees are in effect, the agency will collect approximately \$12,020.00 less each year as the amount to be transferred to the Texas State Board of Pharmacy to operate the Prescription Monitoring Program has been reduced by House Bill 1, Regular Session, 86th Legislature. This will reduce the fifteen percent of license renewal fees allocated by statute to the University of Houston. To accommodate the staggering of license renewals, it is estimated that the agency will collect an additional \$526,200.00 in FY 2021. The additional amount will not be collected in subsequent years. Beginning with the second year of the five year period the amendments are in effect, the agency estimates a reduction each year of \$630 because of the reduced renewal fee for the retired license for charity work. The agency estimates increased receipts of \$3,350 to cover increased costs of official verifications each year an increase from the \$15.00 fee currently charged by the agency. Agency policy to charge this fee and the unchanged fee for lists is now included in the rule. There will be no fiscal implications for local government as a result of enforcing or administering the amendments to Rule §273.4.

For amendments to Rules §273.8, and §273.14, it is estimated that that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Prescription Monitoring Program, which detects potentially harmful prescribing or dispensing patterns or practices that may suggest drug diversion or drug abuse, will be adequately funded. The biennial renewal of licenses means the agency will only need to renew half of the licensees each year, will allow staff to be more efficient accounting for continuing education, and will reduce the workload for licensees every other year. Reducing costs for retired licenses for charity work encourages charity work. Increasing the official verification fees recaptures increased costs for this service.

It is anticipated that there will be no economic costs for active licensed Optometric Glaucoma Specialists, the individuals affected by amendments to Rule §273.4, for each of the first five years the amendments are in effect since the renewal fee is be-

ing reduced by \$3.50. Users of the official verification service will see an increase of \$25.00 per verification. Less than 150 verifications were requested in fiscal year 2018.

The requirements in the amendments for license renewal are necessary to protect the health, safety, and welfare of the residents of this state. The requirements in Rule §273.4 are necessary to implement House Bill 1, Regular Session, 86th Legislature, Article VIII, §7 and Article IX, §§18.30 and 18.36 and fund the Prescription Monitoring Program. The official verification fee increase to offset costs for this service is also necessary to protect the health, safety, and welfare of the residents of this state who may rely on official verification of license and license status of a professional health care provider.

It is predicted that there will be no economic costs for other licensees subject to the amendments as the license renewal fee will remain the same but collected every two years instead of every year. Since continuing education credit can be obtained during a two year window, each licensee will have more flexibility to schedule continuing education. For military spouses using the procedure established by Senate Bill 1200, there is no license fee so the economic costs are substantially reduced by the amendment.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

The agency licenses approximately 4,600 optometrists affected by the rule amendments. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. Some of these practices are in rural communities. The agency does not license these practices; it only licenses individual optometrists. The projected economic impact of this new rule on the small businesses and rural communities is projected to be neutral based on the analysis in the preceding paragraphs of the renewal fee decreases and small individual fee increases.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as de-fined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendments will not require the creation of new employee position or the elimination of an existing employee position; and implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency. The proposed amendments do decrease license renewal fees paid to the agency and the license fees formerly paid by certain military spouses will no longer be available to the agency. The increased fee for official verifications is necessary to protect the health, safety, and welfare of the residents of this state.

The proposed amendments do not create a new regulation but do amend current rules. The proposed amendments do not change the number of individuals subject to the rule, and based on the analysis of the minor fee changes discussed above, the effect on the state's economy is predicted to be neutral.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment to Rule §273.4 is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.154, 351.304, and 351.308; House Bill 1, Regular Session, 86th Legislature, Article VIII, §7 and Article IX, §§18.30 and 18.36; Senate Bill 314, Regular Session, 85th Legislature (Texas Optometry Act, Texas Occupations Code, §§351.154, 351.163, 351.301, 351.302, 351.304, and 351.309); and Texas Occupations Code §112.051.

The amendment to Rule §273.8 is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151 and Senate Bill 314, Regular Session, 85th Legislature (Texas Optometry Act, Texas Occupations Code, §§351.154, 351.163, 351.301, 351.302, 351.304, and 351.309).

The amendment to Rule §273.14 is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151 and Senate Bill 314, Regular Session, 85th Legislature (Texas Optometry Act, Texas Occupations Code, §351.302); Texas Occupations Code §55.006 and Senate Bill 1200, 86th Legislature.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§351.152, 351.154, 351.304, and 351.308 as authorizing the agency to set license renewal and late renewal fees and requiring a deposit to the University of Houston of a percentage of the renewal fee. The agency interprets House Bill 1, Regular Session, 86th Legislature, Article VIII, §7 and Article IX, §§18.30 and 18.36, to require the agency to set fees to fund the Prescription Monitoring Program. Section §112.051 authorizes a fee reduction for the volunteer charity license. The agency interprets §§351.154, 351.163, 351.301, 351.302, and 351.309 to authorize a two year renewal period. The agency interprets §55.006 as setting the period of the military service member, military veteran or military spouses license as the period of other licenses issued by the agency; and Senate Bill 1200, 86th Legislature, as setting a licensing procedure for certain spouses of military service members.

No other sections are affected by the amendments.

#### §273.4. Fees (Not Refundable).

(a) Examination Application Fee \$150.00. [Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety].

(b) License Without Examination Application Fee \$300.00. [Initial Therapeutic License \$50.00 plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$55.00.]

(c) Therapeutic Certification Application Fee \$80.00. [Provisional License \$75.00.]

(d) Optometric Glaucoma Specialist License Application Fee \$50.00. [Limited Faculty License \$50.00. Applicant fee required for

FBI criminal history in the amount charged by the Texas Department of Public Safety.]

(e) Initial Therapeutic License Fee: \$50.00 plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$55.00. Beginning January 1, 2021, a fee of \$260.36 plus \$6.00 fee required by House Bill 2985, 78th Legislature. Total fee for biennial renewal: \$266.36 [Duplicate License (lost, destroyed, or name change) \$25.00.]

(f) License Renewal. [Duplicate/Amended Renewal Certificate (lost, destroyed, inactive, active) \$25.00.]

(1) Fee for licenses renewed on or before the January 1 expiration date:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36.

(B) Active Optometric Glaucoma Specialist: \$220.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$221.00.

(C) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$420.72 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$422.72.

(ii) Active Optometric Glaucoma Specialist: \$440.00 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$442.00.

(iii) Licenses renewed for the one year 2021: the fee will be prorated for the one year period.

(2) License fee for late renewal, one to 90 days late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$315.54 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$316.54.

(B) Active Optometric Glaucoma Specialist: \$330.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$331.00.

(C) Beginning January 1, 2021, the renewal fee for biennial renewal, one to 90 days late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$631.08 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$633.08.

(ii) Active Optometric Glaucoma Specialist: \$660.00 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$662.00.

(iii) Licenses renewed for the one year for 2021: the one to 90 days late fee will be prorated for the one year period.

(3) License fee for late renewal, 91 days to one year late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$420.72 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$421.72.

(B) Optometric Glaucoma Specialist: \$440.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$441.00.

(C) Beginning January 1, 2021, the renewal fee for biennial renewal 91 days to one year late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$841.44 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$843.44.

(ii) Active Optometric Glaucoma Specialist: \$880.00 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$882.00.

(iii) Licenses renewed for the one year for 2021: the 91 days to one year late fee will be prorated for the one year period.

(4) Late fees (for all renewals with delayed continuing education) \$420.72.

(g) Provisional License \$75.00. [License Renewal:]

{(1) Optometrist and Therapeutic Optometrist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fees: \$211.36. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.}

{(2) Optometric Glaucoma Specialist: \$223.50 plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$224.50 active renewal; \$211.36 inactive renewal. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.}

(h) Initial Limited Faculty License \$50.00. [License fee for late renewal, one to 90 days late.]

{(1) Optometrist and Therapeutic Optometrist: \$315.54 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$316.54.}

{(2) Optometric Glaucoma Specialist: \$335.25 plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$336.25 active renewal; \$316.54 inactive renewal.}

(i) Duplicate License, Renewal Certificate, Therapeutic Certificate or Optometric Glaucoma Specialist Certificate (lost, destroyed, or name change) \$25.00. [License fee for late renewal, 90 days to one year late.]

{(1) Optometrist and Therapeutic Optometrist: \$420.72 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$421.72.}

{(2) Optometric Glaucoma Specialist: \$447.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$448.00 active renewal; \$421.72 inactive renewal.}

(j) Retired License. [Late fees (for all renewals with delayed continuing education) \$210.36.]

(1) Optometrist and Therapeutic Optometrist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36.

(2) Optometric Glaucoma Specialist: \$220.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$221.00.

(3) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$210.36 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$212.36.

(B) Active Optometric Glaucoma Specialist: \$220.00 plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$222.00

(k) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. \$25.00. [Therapeutic Certification Application \$80.00.]

(l) Request for Criminal History Evaluation Letters \$125.00. [Duplicate Therapeutic or Optometric Glaucoma Specialist Certificate (lost, destroyed) \$25.00.]

(m) Fee for official license verification: \$40.00 [License Without Examination Fee \$300.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.]

(n) Fee for list of optometrists: \$65.00 [Optometric Glaucoma Specialist License Application \$50.00.]

~~[(o) Retired License.]~~

~~[(1) Optometrist and Therapeutic Optometrist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36.]~~

~~[(2) Optometric Glaucoma Specialist: \$223.50 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$224.50.]~~

~~[(p) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. \$25.00.]~~

~~[(q) Request for Criminal History Evaluation Letters \$125.00.]~~

~~[(r) Section 273.8 of this title defines when the fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety is required.]~~

~~§273.8. *Renewal of License.*~~

~~(a) Expired license.~~

~~(1) If a license is not renewed on or before the expiration date [January 1 of each year], it becomes expired. Beginning January 1, 2021, one-half of licenses must be renewed on a biennial basis. Beginning January 1, 2022, all licenses must be renewed on a biennial basis. Beginning January 1, 2021, initial licenses expire on the second January 1 after the date the license is first issued, except for licenses issued pursuant to Rule 273.14.~~

~~(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the amount of one and one-half times the renewal fee.~~

~~(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board the amount of two times the renewal fee.~~

~~(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by taking and passing the jurisprudence exam and complying with the requirements and procedures for obtaining an initial license. If the person was not licensed as a therapeutic optometrist when the license expired, the person must also complete the requirements for therapeutic license in §§280.1 - 280.3 of this title prior to obtaining a new license.~~

~~(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall~~

be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.

(6) Written notice of the impending license expiration will be sent [mailed] to the licensee at the licensee's last known address, according to the records of the board.

(7) A licensee receiving a felony or misdemeanor criminal conviction, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, other than a Class C Misdemeanor traffic violation, shall report the order of conviction, deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision on the next license renewal. This requirement is in addition to the 30 day reporting requirement in §277.5 of this title (relating to Convictions). This paragraph does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the board to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.

(8) Only an active licensee who has provided a complete fingerprint criminal history report to the Board is eligible to renew a license. During the period 2018 to 2022, one-fifth of current active licensees who have not submitted the report will be notified each year by the Board to provide the report. Licensees so notified shall submit fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority. A license will not be renewed until the notified licensee has complied with the requirement to submit fingerprints.

(b) Mandatory Continuing Education for Renewal of License.

(1) The board may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of this title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements prior to [within the calendar year preceding] the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the board with certified attendance records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency [in the previous year]. Education obtained for renewal of an expired license cannot be applied toward subsequent renewal of license [for the following year].

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the board the license renewal fee with a late penalty fee authorized by §351.304 of the Act, plus a penalty authorized by §351.308 of the Act, in an amount equal to the amount of the license renewal fee.

(5) The executive director shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

(c) (No change.)

§273.14. *License Applications for Military Service Member, Military Veteran, and Military Spouse.*

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

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005.

(1) Applicants currently licensed in another state.

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this title. Such an applicant is not exempt from exam fees charged for an exam administered by an organization or person other than the Board.

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2021, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued. If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this title.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

(2) Requirements for license for military service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

(i) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a

certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(ii) An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2021, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued. If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this title.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

(d) (No change.)

(e) Alternate licensing procedure for military spouse authorized by Texas Occupations Code §55.0041.

(1) Application.

(A) The military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act. For purposes of this subsection, the Board finds that every state and territory that issues a therapeutic license to a graduate of an accredited optometry school has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.

(B) The military spouse applicant shall submit:

(i) proof of the spouse's residency in this state and a copy of the spouse's military identification card;

(ii) a completed Federal Bureau of Investigation fingerprint card provided by the Board;

(iii) an official license verification from the state in which the applicant is licensed that has licensing requirements substantially equivalent to the Texas Optometry Act; and

(iv) application form with proof of identity.

(2) License

(A) A license issued under this subsection:

(i) shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license,

(ii) will expire three years after the license is issued, or if occurring prior to the expiration of the three year period, the date when the military spouse is no longer stationed at a military installation in this state, and

(iii) may not be renewed.

(B) The application and license is exempt from the Texas Jurisprudence Examination and the application fee and initial license fee in §273.4 of this title.

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

Filed with the Office of the Secretary of State on September 12, 2019.

TRD-201903225

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8500



## CHAPTER 275. CONTINUING EDUCATION

### 22 TAC §275.1, §275.2

The Texas Optometry Board proposes amendments to Rules §275.1 and §275.2 to implement Senate Bill 314, Regular Session, 85th Legislature, which authorized the Board to renew licenses for a two year period instead of the current one year period. The amendments modify the continuing education requirements to fit the new license period.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. Mr. Kloeris has also determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the agency will only need to renew half of the licensees each year.

The amendments are necessary to protect the health, safety, and welfare of the residents of this state and apply to licensed optometrists, the individuals affected by this rule. It is predicted that there will be no economic costs for licensees subject to the amendments as the amendments only change the timing of the continuing education requirement. Since continuing education credit can be obtained during a two year window, each licensee will have more flexibility to schedule continuing education.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

The agency licenses approximately 4,600 optometrists affected by the rule amendments. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. Some of these practices are in rural communities. The agency does not license these practices; it only licenses individual optometrists. The projected economic impact of this new rule on the small businesses

and rural communities is projected to be neutral based on the analysis in the preceding paragraph.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program. Further, implementation of the proposed rule will not require the creation of new employee positions or the elimination of an existing employee positions; implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency; and the proposed rule will not require an increase or decrease in fees paid to the agency. The proposed rule does not create a new regulation but does amend a current rule to change the timing of continuing education completion. The proposed rule does not change the number of individuals subject to the rule, and the effect on the state's economy is neutral.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendments to Rule §275.1 and Rule §275.2 are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151 and 351.308, and Senate Bill 314, Regular Session, 85th Legislature (Texas Optometry Act, Texas Occupations Code, §§351.154, 351.163, 351.301, 351.302, 351.304, and 351.309). No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession and §351.308 as setting continuing education requirements. The agency interprets §§351.154, 351.163, 351.301, 351.302, 351.304, and 351.309 as authorizing a two year license renewal period and appropriate changes to the timing of continuing education requirements.

#### §275.1. *General Requirements.*

##### (a) Number of hours required to renew.

(1) The Texas Optometry Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2021 license renewal, at least 12 hours of the required 16 hours shall be in the diagnosis or treatment of ocular disease. The subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(2) Hours required beginning with the 2023 license renewal.

(A) 32 hours of continuing education taken during the two year period preceding license renewal.

(B) 24 hours of the required 32 hours shall be in the diagnosis or treatment of ocular disease.

(C) Two hours of the required 32 hours shall be in professional responsibility as defined in subsection (b)(9) of this section.

(b) (No change.)

(c) Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under Section 351.309 of the Act. The following persons are exempt:

(1) a licensee who holds a Texas license, but does not practice optometry in Texas; provided, however, that if at any time during the calendar year for which such exemption has been obtained such person desires to practice optometry, such person shall not be entitled to practice optometry in Texas until the [16] hours of continuing education credits set out in subsection (a) of this section are obtained and the board has been notified of the completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the period [12 months] immediately preceding the [annual] license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of this section during the period [12 months] immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof of illness or disability may elect to obtain the education requirement by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or

(4) a licensee who was [is] first licensed within the period [12 months] immediately preceding the first [annual] renewal date.

(d) - (f) (No change.)

(g) Retired License Continuing Education.

(1) An applicant with a current license applying for the Retired License shall obtain 8 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(2) An applicant whose license has expired for one year or more shall obtain 16 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least 8 of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(3) The holder of a retired license shall obtain 8 hours of Board approved continuing education during the calendar year prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(4) Beginning with the 2023 license renewal, the holder of a retired license shall obtain 16 hours of Board approved continuing education prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

#### §275.2. Required Education

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

(e) Clinical rotations or rounds. One hour of continuing education credit will be given for each two clock hours spent on clinical rounds, for a maximum of four hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of 8 hours of clinical rotations or rounds hours taken during the two year period preceding license renewal. Sponsoring organizations and universities must submit information regarding scheduled rounds and certify to the board at least on a quarterly basis the number of continuing education hours obtained.

(f) Credit will be given for a maximum of eight hours of the combined total of correspondence course hours and on-line computer course hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of 16 hours of the combined total of correspondence course hours and on-line computer course hours taken during the two year period preceding license renewal. On-line computer courses are those courses described in §275.1(b)(8) of this title (relating to General Requirements). Correspondence courses must be sponsored and graded by accredited optometry colleges.

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

Filed with the Office of the Secretary of State on September 12, 2019.

TRD-201903226

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8500

## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

#### 22 TAC §283.12

The Texas State Board of Pharmacy proposes amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, establish procedures for a military spouse who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially similar to Texas's requirements to obtain an interim pharmacist license, in accordance with Senate Bill 1200 of the 86th Legislative Session.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding licensing requirements and to provide clear

procedures for military spouse pharmacists to request an interim pharmacist license. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§283.12. Licenses for Military Service Members, Military Veterans, and Military Spouses.*

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

- (1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.
- (2) Armed forces of the United States--The army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.
- (3) Military service member--A person who is on active duty.
- (4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(b) Alternative licensing procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing as a pharmacist.

(1) Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in this subsection prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information, and such criminal history check does not reveal any disposition for a crime specified in §281.64 of this title (relating to Sanctions for Criminal Offenses) indicating a sanction of denial, revocation, or suspension; and

(E) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b) of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation of eligibility, including:

- (i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and
- (ii) marriage certificate, if a military spouse.

(2) Requirements for an applicant whose Texas pharmacist license has expired. An applicant whose Texas pharmacist license has expired within five years preceding the application date:

(A) shall complete the Texas application for licensing that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) shall provide documentation of eligibility, including:



(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); however, the applicant shall be exempt from the fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(3) A temporary license issued under this section is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(4) A temporary license issued under this section expires within six months of issuance if the individual fails to pass the Texas Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(5) An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under this subsection.

(c) Expedited licensing procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse and who holds a current license as a pharmacist issued by another state may complete the following expedited procedures for licensing as a pharmacist. The applicant shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application. If such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, date of birth, and social security number; and

(C) any other information requested on the application.

(4) present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been sus-

pending, revoked, canceled, surrendered, or otherwise restricted for any reason;

(5) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved; and

(6) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacist license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license as follows:

(1) A military service member who fails to renew their pharmacist license in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and license number of the pharmacist;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §295.8 of this title (relating to Continuing Education Requirements).

(e) Inactive status. The holder of a pharmacist license who is a military service member, a military veteran, or a military spouse who holds a pharmacist license and who is not engaged in the practice of pharmacy in this state may place the license on inactive status as specified in §295.9 of this title (relating to Inactive License). The inactive license holder:

(1) shall provide documentation to include:

(A) military identification indicating that the pharmacist is a military service member, military veteran, or military dependent, if a military spouse; and

(B) marriage certificate, if a military spouse;

(2) shall be exempt from the fees specified in §295.9(a)(1)(C) and §295.9(a)(2)(C) of this title;

(3) shall not practice pharmacy in this state; and

(4) may reactivate the license as specified in §295.9 of this title (relating to Inactive License).

(f) Interim license for military spouse. In accordance with §55.0041, Occupations Code, a military spouse who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially equivalent to the licensing requirements in this state may be issued an interim pharmacist license. The military spouse:

(1) shall provide documentation to include:

(A) a notification of intent to practice form including any additional information requested;

(B) proof of the military spouse's residency in this state;

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

(D) verification from the jurisdiction in which the military spouse holds an active pharmacist license that the military spouse's license is in good standing;

(2) may not practice pharmacy in this state until issued an interim pharmacist license;

(3) may hold an interim pharmacist license 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 of issuance of the interim license; and

(4) may not renew the interim pharmacist license.

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

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903307

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8010



## CHAPTER 291. PHARMACIES

### SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

#### 22 TAC §291.121

The Texas State Board of Pharmacy proposes amendments to §291.121, concerning Remote Pharmacy Services. The amendments, if adopted, clarify that a telepharmacy system located at a federally qualified health center may be located in a community in which a Class A or Class C pharmacy is located, in accordance with Senate Bill 670.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the operation of a telepharmacy system in a community in which a Class A or Class C pharmacy is located. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

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

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

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.121. *Remote Pharmacy Services.*

(a) Remote pharmacy services using automated pharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated pharmacy system as outlined in §562.109 of the Texas Pharmacy Act.

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

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Repackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an automated pharmacy system.

(C) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(E) Remote site--A facility not located at the same location as a Class A or Class C pharmacy, at which remote pharmacy services are provided using an automated pharmacy dispensing system.

(F) Unit dose--An amount of a drug packaged in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an automated pharmacy system to a jail or prison operated by or for the State of Texas, a jail or prison operated by local government or a healthcare facility regulated under Chapter 142, 242, 247, or 252, Health and Safety Code, provided drugs are administered by a licensed healthcare professional working in the jail, prison, or healthcare facility.

(B) A provider pharmacy may only provide remote pharmacy services using an automated pharmacy system to inpatients of the remote site.

(C) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(D) Before providing remote pharmacy services, the automated pharmacy system at the remote site must be tested by the provider pharmacy and found to dispense accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(E) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(F) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated pharmacy system located at the remote site including supervision of the automated pharmacy system and compliance with this section.

(G) A pharmacist from the provider pharmacy shall be accessible at all times to respond to patient's or other health professionals' questions and needs pertaining to drugs dispensed through the use of the automated pharmacy system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an automated pharmacy system.

(i) A Class A or Class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated pharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an automated pharmacy system is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an automated pharmacy system at the facility.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 (relating to Notifications) of this title.

(C) Environment/Security.

(i) A provider pharmacy shall only store drugs at a remote site within an automated pharmacy system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) An automated pharmacy system shall be under the continuous supervision of a provider pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist.

(iii) Automated pharmacy systems shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(iv) Access to the automated pharmacy system shall be limited to pharmacists or personnel who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated pharmacy system.

(v) Drugs shall be stored in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs shall only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) A pharmacist at the provider pharmacy shall control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Subsequent doses from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

(iii) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to releasing a prescription drug order to the automated pharmacy system.

(iv) Drugs dispensed by the provider pharmacy through an automated pharmacy system shall comply with the labeling or labeling alternatives specified in §291.33(c) of this title.

(v) An automated pharmacy system used to meet the emergency medication needs for residents of a remote site must comply with the requirements for emergency medication kits in subsection (b) of this section.

(E) Drugs.

(i) Drugs for use in an automated pharmacy system shall be packaged in the original manufacturer's container or be prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(ii) Drugs dispensed from the automated pharmacy system may be returned to the pharmacy for reuse provided the drugs are in sealed, tamper evident packaging which has not been opened.

(F) Stocking an automated pharmacy system.

(i) Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the automated pharmacy system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged cartridges or containers may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the cartridge or container has been properly filled and labeled;

(II) the individual cartridges or containers are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the automated pharmacy system shall be delivered to the remote site by the provider pharmacy.

(G) Quality assurance program. A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to a written program for quality assurance of the automated pharmacy system which:

(i) requires continuous supervision of the automated pharmacy system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated pharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(H) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have access to the drugs stored in the automated pharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated pharmacy system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the automated pharmacy system;

(-c-) preventative maintenance of the automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to dispense prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an automated pharmacy system in compliance with §291.34(b) of this title.

(iii) if prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) The automated pharmacy system shall electronically record all transactions involving drugs stored in, removed, or dispensed from the system.

(ii) Records of dispensing from an automated pharmacy system for a patient shall be maintained by the providing pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) name, strength, dosage form, and quantity of drug accessed; and

(V) name of the patient for whom the drug was accessed.

(iii) Records of stocking or removal from an automated pharmacy system shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked or removed;

(III) name, initials, or identification code of the person stocking or removing drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(E) Patient medication records. Patient medication records shall be created and maintained by the provider pharmacy in the manner required by §291.34(c) of this title.

(F) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title (relating to Inventory Requirements for All Classes of Pharmacies) that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(b) Remote pharmacy services using emergency medication kits.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an emergency medication kit as outlined in §562.108 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Emergency medication kits--Controlled substances and dangerous drugs maintained by a provider pharmacy to meet the emergency medication needs of a resident:

(i) at an institution licensed under Chapter 242 or 252, Health and Safety Code; or

(ii) at an institution licensed under Chapter 242, Health and Safety Code and that is a veterans home as defined by the §164.002, Natural Resources Code, if the provider pharmacy is a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy.

(C) Repackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an emergency medication kit.

(D) Provider pharmacy--The community pharmacy (Class A), the institutional pharmacy (Class C), the non-resident (Class E) pharmacy located not more than 20 miles from an institution licensed under Chapter 242 or 252, Health and Safety Code, or the United States Department of Veterans Affairs pharmacy or another federally operated pharmacy providing remote pharmacy services.

(E) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(F) Remote site--A facility not located at the same location as a Class A, Class C, Class E pharmacy or a United States Department of Affairs pharmacy or another federally operated pharmacy, at which remote pharmacy services are provided using an emergency medication kit.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an emergency medication kit to an institution regulated under Chapter 242, or 252, Health and Safety Code.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) A provider pharmacy shall not place an emergency medication kit in a remote site which already has a kit from another provider pharmacy except as provided by paragraph (4)(B)(iii) of this subsection.

(D) A provider pharmacy which is licensed as an institutional (Class C) or a non-resident (Class E) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the emergency medication kit located at the remote site including supervision of the emergency medication kit and compliance with this section.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an emergency medication kit.

(i) A Class A, Class C, or Class E Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an emergency medication kit.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an emergency medication kit is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an emergency medication kit at the facility.

(iii) If more than one provider pharmacy provides an emergency kit to a remote site, the provider pharmacies must enter into a written agreement as to the emergency medications supplied by each pharmacy. The provider pharmacies shall not duplicate drugs stored in the emergency medication kits. The written agreement shall include reasons why an additional pharmacy is required to meet the emergency medication needs of the residents of the institution.

(iv) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) Emergency medication kits shall have adequate security and procedures to:

(I) prohibit unauthorized access;

(II) comply with federal and state laws and regulations; and

(III) maintain patient confidentiality.

(ii) Access to the emergency medication kit shall be limited to pharmacists and licensed healthcare personnel employed by the facility.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs in the emergency medication kit shall be accessed for administration to meet the emergency medication needs of a resident of the remote site pursuant to an order from a practitioner. The prescription drug order for the drugs used from the emergency medication kit shall be forwarded to the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) The remote site shall notify the provider pharmacy of each entry into an emergency medication kit. Such notification shall meet the requirements of paragraph (5)(D)(ii) of this subsection.

(E) Drugs.

(i) The contents of an emergency medication kit:

(I) may consist of dangerous drugs and controlled substances; and

(II) shall be determined by the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses and limited to those drugs necessary to meet the resident's emergency medication needs. For the purpose of this subsection, this shall mean a situation in which a drug cannot be supplied by a pharmacy within a reasonable time period.

(ii) When deciding on the drugs to be placed in the emergency medication kit, the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses must determine, select, and record a prudent number of drugs for potential emergency incidents based on:

(I) clinical criteria applicable to each facility's demographics;

(II) the facility's census; and

(III) the facility's healthcare environment.

(iii) A current list of the drugs stored in each remote site's emergency medication kit shall be maintained by the provider pharmacy and a copy kept with the emergency medication kit.

(iv) An automated pharmacy system may be used as an emergency medication kit provided the system limits emergency access to only those drugs approved for the emergency medication kit.

(v) Drugs for use in an emergency medication kit shall be packaged in the original manufacturer's container or prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded, the prepackaging of the containers or unit dose drugs shall

occur at the provider pharmacy unless provided by a FDA approved repackager. The prepackaged containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the container or unit dose drug has been properly filled and labeled;

(II) the individual containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) Policies and procedures of operation.

(i) A provider pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) duties which may only be performed by a pharmacist;

(II) a copy of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(III) date of last review/revision of the policy and procedure manual; and

(IV) policies and procedures for:

(-a-) security;

(-b-) operation of the emergency medication

kit;

(-c-) preventative maintenance of the automated pharmacy system if the emergency medication kit is an automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an emergency medication kit which is an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to provide emergency medications. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an emergency medication kit in compliance with §291.34(b) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) A prescription drug order shall be maintained by the provider pharmacy as the record of removal of a drug from an emergency medication kit for administration to a patient.

(ii) The remote site shall notify the provider pharmacy electronically or in writing of each entry into an emergency medication kit. Such notification may be included on the prescription drug order or a separate document and shall include the name, strength, and quantity of the drug removed, the time of removal, and the name of the person removing the drug.

(iii) A separate record of stocking, removal, or dispensing for administration from an emergency medication kit shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked, removed, or dispensed for administration;

(III) name, initials, or identification code of the person stocking, removing, or dispensing for administration, drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled; and

(V) unique prescription number assigned to the prescription drug order when the drug is administered to the patient.

(E) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title, that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(c) Remote pharmacy services using telepharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a healthcare facility that is not at the same location as a Class A or Class C pharmacy through a telepharmacy system as outlined in §562.110 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Provider pharmacy--

(i) a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site or at a healthcare facility that is regulated by this state or the United States; or

(ii) a Class C pharmacy that provides pharmacy services through a telepharmacy system at a healthcare facility that is regulated by this state or the United States.

(B) Remote dispensing site--a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(C) Remote healthcare site--a healthcare facility regulated by this state or the United States that is a:

(i) rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

(ii) health center as defined by 42 U.S.C. Section 254b;

(iii) healthcare facility located in a medically underserved area as determined by the United States Department of Health and Human Services; [or]

(iv) healthcare facility located in a health professional shortage area as determined by the United States Department of Health and Human Services; [or]

(v) a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B).

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, drug regimen review, and patient counseling, at a remote site.

(E) Remote site--a remote healthcare site or a remote dispensing site.

(F) Still image capture--A specific image captured electronically from a video or other image capture device.

(G) Store and forward--A video or still image record which is saved electronically for future review.

(H) Telepharmacy system--A system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

(i) audio and video;

(ii) still image capture; and

(iii) store and forward.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using a telepharmacy system at a:

(i) remote healthcare site; or;

(ii) remote dispensing site.

(B) A provider pharmacy may not provide remote pharmacy services at a remote healthcare site if a Class A or Class C pharmacy that dispenses prescription drug orders to out-patients is located in the same community, unless the remote healthcare site is a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B). For the purposes of this subsection a community is defined as:

(i) the census tract in which the remote site is located, if the remote site is located in a Metropolitan Statistical Area (MSA) as defined by the United States Census Bureau in the most recent U.S. Census; or

(ii) within 10 miles of the remote site, if the remote site is not located in a MSA.

(C) A provider pharmacy may not provide remote pharmacy services at a remote dispensing site if a Class A pharmacy is located within 22 miles by road of the remote dispensing site.

(D) If a Class A or Class pharmacy is established in a community in which a remote healthcare site has been located, the remote healthcare site may continue to operate.

(E) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(F) Before providing remote pharmacy services, the telepharmacy system at the remote site must be tested by the provider pharmacy and found to operate properly. The provider pharmacy shall make the results of such testing available to the board upon request.

(G) A provider pharmacy which is licensed as a Class C pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(H) A provider pharmacy can only provide pharmacy services at no more than two remote dispensing sites.

(4) Personnel.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all operations at the remote site including supervision of the telepharmacy system and compliance with this section.

(B) The provider pharmacy shall have sufficient pharmacists on duty such that each pharmacist may supervise no more than two remote sites that are simultaneously open to provide services.



(C) The following duties shall be performed only by a pharmacist at the provider pharmacy:

- (i) receiving an oral prescription drug order;
- (ii) interpreting the prescription drug order;
- (iii) verifying the accuracy of prescription data entry;
- (iv) selecting the drug product to be stored and dispensed at the remote site;
- (v) interpreting the patient's medication record and conducting a drug regimen review;
- (vi) authorizing the telepharmacy system to print a prescription label at the remote site;
- (vii) performing the final check of the dispensed prescription to ensure that the prescription drug order has been dispensed accurately as prescribed; and
- (viii) counseling the patient.

(5) Operational standards.

(A) Application to provide remote pharmacy services using a telepharmacy system.

(i) A Class A or class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using a telepharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the renewal of the provider pharmacy's license.

(iii) On approval of the application, the provider pharmacy will be sent a license for the remote site, which must be displayed at the remote site.

(iv) If the average number of prescriptions dispensed each day at a remote dispensing site is open for business is more than 125 prescriptions, as calculated each calendar year, the remote dispensing site shall apply for a Class A pharmacy license as specified in §291.1 of this title (relating to Pharmacy License Application).

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of a remote site where a telepharmacy system is operated by the pharmacy.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site, if controlled substances are maintained.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) A remote site shall be under the continuous supervision of a provider pharmacy pharmacist at all times the site is open to provide pharmacy services. To qualify as continuous supervision, the pharmacist is not required to be physically present at the remote site and shall supervise electronically through the use of the following types of technology:

- (I) audio and video;
- (II) still image capture; and
- (III) store and forward.

(ii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(iii) Drugs for use in the telepharmacy system at a remote healthcare site shall be stored in an area that is:

(I) separate from any other drugs used by the healthcare facility; and

(II) locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(iv) Drugs for use in the telepharmacy system at a remote dispensing site shall be stored in an area that is locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(v) Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to:

(I) pharmacists employed by the provider pharmacy;

(II) licensed healthcare providers, if the remote site is a remote healthcare site; and

(III) pharmacy technicians;

(vi) Individuals authorized to access the remote site and operate the telepharmacy system shall:

(I) be designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the telepharmacy pharmacy system.

(vii) Remote sites shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(D) Prescription dispensing and delivery.

(i) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to delivery of the dispensed prescription to the patient or patient's agent.

(ii) The dispensed prescription shall be labeled at the remote site with the information specified in §291.33(c) of this title.

(iii) A pharmacist at the provider pharmacy shall perform the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed. This final check shall be accomplished through a visual check using electronic methods.

(iv) A pharmacist at the provider pharmacy shall counsel the patient or patient's agent as specified in §291.33(c) of this title. This counseling may be performed using electronic methods. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(v) If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or pharmacy

technician may enter prescription information into the data processing system.

(vi) Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a pharmacy technician, pharmacy technician trainee, or licensed healthcare provider reconstitutes the product.

(vii) A telepharmacy system located at a remote dispensing site may not dispense a schedule II controlled substance.

(viii) Drugs dispensed at the remote site through a telepharmacy system shall only be delivered to the patient or patient's agent at the remote site.

(E) Quality assurance program. A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall operate according to a written program for quality assurance of the telepharmacy system which:

(i) requires continuous supervision of the telepharmacy system at all times the site is open to provide remote pharmacy services; and

(ii) establishes mechanisms and procedures to routinely test the operation of the telepharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures.

(i) A pharmacy that provides pharmacy services through a telepharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have:

(-a-) have access to the area where drugs are stored at the remote site; and

(-b-) operate the telepharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) if the remote site is located at a remote healthcare site, a copy of the written contact or agreement between the provider pharmacy and the healthcare facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations;

(IV) date of last review/revision of policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the telepharmacy system;

(-c-) sanitation;

(-d-) storage of drugs;

(-e-) dispensing;

(-f-) supervision;

(-g-) drug and/or device procurement;

(-h-) receiving of drugs and/or devices;

(-i-) delivery of drugs and/or devices; and

(-j-) recordkeeping

(ii) A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall, at least an-

nually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services through a telepharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of a pharmacist to electronically supervise the telepharmacy system and the dispensing of prescription drugs at the remote site. The written plan for recovery shall include:

(I) a statement that prescription drugs shall not be dispensed at the remote site, if a pharmacist is not able to electronically supervise the telepharmacy system and the dispensing of prescription drugs;

(II) procedures for response when a telepharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(6) Additional operational standards for remote dispensing sites.

(A) A pharmacist employed by a provider pharmacy shall make at least monthly on-site visits to a remote site. The remote site shall maintain documentation of the visit.

(B) A pharmacist employed by a provider pharmacy shall be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations.

(C) A remote dispensing site shall be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy.

(D) All pharmacy technicians at a remote dispensing site shall be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy which, notwithstanding Section 568.006 of the Act, may not exceed three pharmacy technicians for each pharmacist providing supervision.

(E) A pharmacy technician working at a remote dispensing site must:

(i) have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

(ii) have completed a training program on the proper use of a telepharmacy system.

(F) A pharmacy technician at a remote dispensing site may not perform sterile or nonsterile compounding. However, a pharmacy technician may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

(7) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) accessible by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic

format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The remote site shall maintain original prescription drug orders for medications dispensed from a remote site using a telepharmacy system in the manner required by §291.34(b) of this title and the provider pharmacy shall have electronic access to all prescription records.

(iii) If prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and by each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Patient medication records. Patient medication records shall be created and maintained at the remote site or provider pharmacy in the manner required by §291.34(c) of this title. If such records are maintained at the remote site, the provider pharmacy shall have electronic access to those records.

(D) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs ordered and dispensed by a remote site separate from the records of the provider pharmacy and from any other remote site's records;

(II) keep a perpetual inventory of all controlled substances that are received and dispensed or distributed from each remote site. The perpetual inventory shall be reconciled, by a pharmacist employed by the provider pharmacy, at least monthly.

(ii) As specified in §291.17 of this title. A provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs at the provider pharmacy.

(III) A copy of the inventory of the remote site shall be maintained at the remote site.

(d) Remote pharmacy services using automated storage and delivery systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated storage and delivery system.

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

(A) Automated storage and delivery system--A mechanical system that delivers dispensed prescription drugs to patients at a remote delivery site and maintains related transaction information.

(B) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(C) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(D) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(E) Remote delivery site--A location at which remote pharmacy services are provided using an automated storage and delivery system.

(F) Remote pharmacy service--The provision of pharmacy services, including the storage and delivery of prescription drugs, in remote delivery sites.

(3) General requirements for a provider pharmacy to provide remote pharmacy services using an automated storage and delivery system to deliver a previously verified prescription that is dispensed by the provider pharmacy to a patient or patient's agent.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated storage and delivery system located at the remote delivery site including supervision of the automated storage and delivery system and compliance with this section.

(B) The patient or patient's agent shall receive counseling via a direct link to audio or video communication by a Texas licensed pharmacist who has access to the complete patient medication record (patient profile) maintained by the provider pharmacy prior to the release of any new prescription released from the system.

(C) A pharmacist shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs delivered through the use of the automated storage and delivery system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(D) The patient or patient's agent shall be given the option whether to use the system.

(E) An electronic notice shall be provided to the patient or patient's agent at the remote delivery site with the following information:

(i) the name and address of the pharmacy that verified the previously dispensed prescription; and

(ii) a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication.

(F) Drugs stored in the automated storage and distribution system shall be stored at proper temperatures, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(G) A provider pharmacy may only provide remote pharmacy services using an automated storage and delivery system to patients at a board-approved remote delivery site.

(H) A provider pharmacy may provide remote pharmacy services at more than one remote delivery site.

(I) Before providing remote pharmacy services, the automated storage and delivery system at the remote delivery site must be tested by the provider pharmacy and found to deliver accurately. The

provider pharmacy shall make the results of such testing available to the board upon request.

(J) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(4) Operational standards.

(A) Application to provide remote pharmacy services using an automated storage and delivery system.

(i) A community (Class A) or institutional (Class C) pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated storage and delivery system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the provider pharmacy.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service.

(ii) A provider pharmacy shall comply with appropriate controlled substance registrations for each remote delivery site if dispensed controlled substances are maintained within an automated storage and delivery system at the facility.

(iii) A provider pharmacy shall file an application for change of location and/or name of a remote delivery site as specified in §291.3 of this title (relating to Notifications).

(C) Environment/Security.

(i) A provider pharmacy shall only store dispensed drugs at a remote delivery site within an automated storage and delivery system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) Access to the automated storage and delivery system shall be limited to pharmacists, and pharmacy technicians or pharmacy technician trainees under the direct supervision of a pharmacist who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated storage and delivery system.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 (relating to Storage of Drugs) and §291.33(c)(8) (relating to Returning Undelivered Medication to Stock) of this title, including the requirements for temperature and the return of undelivered medication to stock.

(iv) the automated storage and delivery system must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality.

(D) Stocking an automated storage and delivery system. Stocking of dispensed prescriptions in an automated storage and delivery system shall be completed under the supervision of a pharmacist.

(E) Quality assurance program. A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to a written program for quality assurance of the automated storage and delivery system which:

(i) requires continuous supervision of the automated storage and delivery system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated storage and delivery system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(ii) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated storage and delivery system shall maintain a written plan for recovery from an event which interrupts the ability of the automated storage and delivery system to deliver dispense prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated storage and delivery system is experiencing downtime;

(II) procedures for response when an automated storage and delivery system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall have a workable (electronic) data retention system which can produce a separate audit trail of drug delivery and retrieval transactions at each remote delivery site for the preceding two years.

(B) Transaction information.

(i) The automated storage and delivery system shall electronically record all transactions involving drugs stored in, removed, or delivered from the system.

(ii) Records of delivery from an automated storage and delivery system for a patient shall be maintained by the provider pharmacy and include the:

- (I) identity of the system accessed;
- (II) identification of the individual accessing the system;
- (III) date of transaction;
- (IV) prescription number, drug name, strength, dosage form;
- (V) number of prescriptions retrieved;
- (VI) name of the patient for whom the prescription was retrieved;
- (VII) name of prescribing practitioner; and
- (VIII) name of pharmacist responsible for consultation with the patient, if required, and documentation that the consultation was performed.

(iii) Records of stocking or removal from an automated storage and delivery system shall be maintained by the pharmacy and include the:

- (I) date;
- (II) prescription number;
- (III) name of the patient;
- (IV) drug name;
- (V) number of dispensed prescription packages stocked or removed;
- (VI) name, initials, or identification code of the person stocking or removing dispensed prescription packages from the system; and
- (VII) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(C) the pharmacy shall make the automated storage and delivery system and any records of the system, including testing records, available for inspection by the board; and

(D) the automated storage and delivery system records a digital image of the individual accessing the system to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

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Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8010



## CHAPTER 295. PHARMACISTS

### 22 TAC §295.8

The Texas State Board of Pharmacy proposes amendments to §295.8, concerning Continuing Education Requirements. The amendments, if adopted, add requirements for two hours of continuing education on pain management as specified in House Bill 3285, two hours of continuing education on prescribing and monitoring controlled substances as specified in House Bill 2174, and a human trafficking prevention course as specified in House Bill 2059, and remove a requirement for one hour of continuing education on opioid abuse.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be increased awareness and education amongst the pharmacist community and consistency between state law and Board rules regarding pharmacist continuing education requirements.

There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.8. *Continuing Education Requirements.*

(a) Authority and purpose.

(1) Authority. In accordance with §559.053 of the Texas Pharmacy Act, (Chapters 551 - 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) Purpose. The board recognizes that the fundamental purpose of continuing education is to maintain and enhance the professional competency of pharmacists licensed to practice in Texas, for the protection of the health and welfare of the citizens of Texas.

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

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code.

(3) Approved programs--Live programs, home study, and other mediated instruction delivered by an approved provider or a program specified by the board and listed as an approved program in subsection (e) of this section.

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board.

(5) Board--The Texas State Board of Pharmacy.

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of an approved continuing education program.

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately 60 minutes of participation in an organized learning experience.

(8) Continuing education unit (CEU)--A unit of measure of education credit which is equivalent to 10 contact hours (i.e., one CEU = 10 contact hours).

(9) CPE Monitor--A collaborative service from the National Association of Boards of Pharmacy and ACPE that provides an electronic system for pharmacists to track their completed CPE credits.

(10) Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(11) Enduring Materials (Home Study)--Activities that are printed, recorded or computer assisted instructional materials that do not provide for direct interaction between faculty and participants.

(12) Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date following the initial 30 day expiration date. This time period ranges from eighteen to thirty months depending upon the birth month of the licensee.

(13) License period--The time period between consecutive expiration dates of a license.

(14) Live programs--Activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

(15) Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section;

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period as a Texas licensed pharmacist, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of at least thirty contact hours (3.0 CEUs) of continuing education. The following is applicable to the reporting of continuing education contact hours:

(A) at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to Texas pharmacy laws or rules;

(B) for renewals received after August 31, 2021 and before September 1, 2023, at least one contact hour (0.1 CEU) annually, for a total of two contact hours (0.2 CEU) specified in paragraph (1) of this subsection, shall be related to best practices, alternative treatment options, and multi-modal approaches to pain management as specified in §481.0764 of the Texas Health and Safety Code;

~~[(B) at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to opioid abuse; and]~~

(C) at least two contact hours (0.2 CEU) specified in paragraph (1) of this subsection shall be related to approved procedures of prescribing and monitoring controlled substances and obtained by September 1, 2021, and must be reported on the next renewal after September 1, 2021;

(D) [(C)] any continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section; and[-]

(E) for renewals received after August 31, 2020 and before September 1, 2022, a pharmacist must have completed the human trafficking prevention course required in §116.002 of the Texas Occupations Code.

(2) Failure to report completion of required continuing education. The following is applicable if a pharmacist fails to report completion of the required continuing education:

(A) the license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board; and

(B) a pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license including the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) the pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) a statement of the reason for the request for extension;

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated; and

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances and if because of military deployment, documentation of the dates of the deployment;

(B) after review and approval of the petition, a pharmacist may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period;

(C) an extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period; and

(D) if a petition for extension to the reporting period for continuing education is denied, the pharmacist shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (2) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(4) Exemptions from reporting requirements.

(A) All pharmacists licensed in Texas shall be exempt from the continuing education requirements during their initial license period.

(B) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive. Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in this subparagraph must:

(i) notify the board of their intent to actively practice pharmacy;

(ii) pay the fee as specified in §295.9 of this title (relating to Inactive License); and

(iii) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 contact hours (3.0 CEUs). Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions:

(A) pharmacists may receive credit for the completion of the same ACPE course only once during a license period;

(B) pharmacists who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and

(C) proof of completion of an ACPE course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) the assigned ACPE universal program number and a "P" designation indicating that the CE is targeted to pharmacists; and

(vi) either:

(I) a dated certifying signature of the approved provider and the official ACPE logo; or

(II) the CPE Monitor logo.

(2) Courses which are part of a professional degree program or an advanced pharmacy degree program offered by a college of pharmacy which has a professional degree program accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during a license period. A course is equivalent to one credit hour for each year of the renewal period.

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(3) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during a license period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(4) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for twelve contact hours (1.2 CEUs) towards their continuing education requirement for completion of an ACLS or

PALS course only once during a license period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(5) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for four contact hours (0.4 CEUs) towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a license period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(6) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for attending a full, public board business meeting in its entirety;

(B) a maximum of six contact hours (0.6 CEUs) are allowed for attendance at a board meeting during a license period; and

(C) proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(7) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force; and

(B) proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(8) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy; and

(B) proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(9) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy; and

(B) proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the provider; and

(vi) documentation that the program is approved by the other state board of pharmacy.

(10) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment; and

(B) proof of completion of an ISMP Medication Safety Self Assessment shall be:

(i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(ii) a document from ISMP showing completion of an assessment.

(11) Pharmacist shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

(12) Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions:

(A) pharmacists may receive credit for the completion of the same CME course only once during a license period;

(B) pharmacists who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and

(C) proof of completion of a CME course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

and

(v) a dated certifying signature of the approved provider.

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application. Such records may be maintained in hard copy or electronic format.

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits:

(A) upon written request, a pharmacist shall provide to the board documentation of proof for all continuing education contact



hours reported during a specified license period(s). Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board;

(B) credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits documentation of proof reflecting that the hours were completed during the specified license period(s). Any other reported hours shall be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action; and

(C) a pharmacist who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

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

Filed with the Office of the Secretary of State on September 16, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



## 22 TAC §295.13

The Texas State Board of Pharmacy proposes amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician. The amendments, if adopted, clarify that a federally qualified health center is a practice setting in which physician delegation to a pharmacist of specific acts of drug therapy management may occur, in accordance with House Bill 2425 of the 86th Legislative Session.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the practice settings in which a pharmacist may be delegated specific acts of drug therapy management. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

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

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

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the proposed amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§295.13. Drug Therapy Management by a Pharmacist under Written Protocol of a Physician.*

(a) Purpose. The purpose of this section is to provide standards for the maintenance of records of a pharmacist engaged in the provision of drug therapy management as authorized in Chapter 157 of the Medical Practice Act and §554.005 of the Act.

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

(1) Act--The Texas Pharmacy Act, Chapter 551 - 566 and 568 - 569, Occupations Code, as amended.

(2) Board--The Texas State Board of Pharmacy.

(3) Confidential record--Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(4) Drug therapy management--The performance of specific acts by pharmacists as authorized by a physician through written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician, unless the drug product is named in the physician initiated protocol or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following:

(A) collecting and reviewing patient drug use histories;

(B) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(C) ordering drug therapy related laboratory tests;

(D) implementing or modifying drug therapy following diagnosis, initial patient assessment, and ordering of drug therapy by a physician as detailed in the protocol; or

(E) any other drug therapy related act delegated by a physician.

(5) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(6) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Medical Practice Act.

(A) A written protocol must contain at a minimum the following:

(i) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(ii) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(iii) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(I) a statement of the ailments or diseases involved, drugs, and types of drug therapy management authorized; and

(II) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(iv) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(v) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(B) A standard protocol may be used or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(c) Physician delegation to a pharmacist.

(1) As specified in Chapter 157 of the Texas Medical Practices Act, a physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol.

(2) A delegation under paragraph (1) of this subsection may include the implementation or modification of a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs, if:

(A) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician;

(B) the pharmacist practices in a federally qualified health center, hospital, hospital-based clinic, or an academic health care institution; and

(C) the federally qualified health center, hospital, hospital-based clinic, or academic health care institution in which the pharmacist practices has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy.

(3) A pharmacist who signs a prescription for a dangerous drug under authority granted under paragraph (2) of this subsection shall:

(A) notify the board that a physician has delegated the authority to sign a prescription for dangerous drugs. Such notification shall:

(i) be made on an application provided by the board;

(ii) occur prior to signing any prescription for a dangerous drug;

(iii) be updated annually; and

(iv) include a copy of the written protocol.

(B) include the pharmacist's name, address, and telephone number as well as the name, address, and telephone number of the delegating physician on each prescription for a dangerous drug signed by the pharmacist.

(4) The board shall post the following information on its web-site:

(A) the name and license number of each pharmacist who has notified the board that a physician has delegated authority to sign a prescription for a dangerous drug;

(B) the name and address of the physician who delegated the authority to the pharmacist; and

(C) the expiration date of the protocol granting the authority to sign a prescription.

(d) Pharmacist Training Requirements.

(1) Initial requirements. A pharmacist shall maintain and provide to the Board within 24 hours of request a statement attesting to the fact that the pharmacist has within the last year:

(A) completed at least six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE); or

(B) engaged in drug therapy management as allowed under previous laws or rules. A statement from the physician supervising the acts shall be sufficient documentation.

(2) Continuing requirements. A pharmacist engaged in drug therapy management shall annually complete six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE). (These hours may be applied towards the hours required for renewal of a license to practice pharmacy.)

(e) Supervision. Physician supervision shall be as specified in the Medical Practice Act, Chapter 157 and shall be considered adequate if the delegating physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviations from the protocol and review of the written protocol and any patient-specific deviations

from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informs the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction; and

(6) determines that the pharmacist to whom the physician is delegating drug therapy management establishes and maintains a pharmacist-patient relationship with the patient.

(f) Records.

(1) Maintenance of records.

(A) Every record required to be kept under this section shall be kept by the pharmacist and be available, for at least two years from the date of such record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Written protocol.

(A) A copy of the written protocol and any patient-specific deviations from the protocol shall be maintained by the pharmacist.

(B) A pharmacist shall document all interventions undertaken under the written protocol within a reasonable time of each intervention. Documentation may be maintained in the patient medication record, patient medical chart, or in a separate log.

(C) A standard protocol may be used or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient. A pharmacist shall maintain a copy of any deviations from the standard protocol ordered by the physician.

(D) Written protocols, including standard protocols, any patient-specific deviations from a standard protocol, and any individual patient protocol, shall be reviewed by the physician and pharmacist at least annually and revised if necessary. Such review shall be documented in the pharmacist's records. Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Confidentiality.

(1) In addition to the confidentiality requirements specified in §291.27 of this title (relating to Confidentiality) a pharmacist shall comply with:

(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;

(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;

(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and

(D) any other confidentiality provisions of federal or state laws.

(2) This section shall not affect or alter the provisions relating to the confidentiality of the physician-patient communication as specified in the Medical Practice Act, Chapter 159.

(h) Construction and Interpretation.

(1) As specified in the Medical Practice Act, Chapter 157, this section does not restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols.

(2) As specified in the Medical Practice Act, Chapter 157, this section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Act, §554.004.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.8

The Texas State Board of Pharmacy proposes amendments to §297.8, concerning Continuing Education Requirements. The amendments, if adopted, add a requirement for a human trafficking prevention course as specified in House Bill 2059 and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be

increased awareness and education amongst the technician community, consistency between state law and Board rules regarding pharmacy technician education requirements and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.8. *Continuing Education Requirements.*

(a) Pharmacy Technician Trainees. Pharmacy technician trainees are not required to complete continuing education.

(b) Pharmacy Technicians.

(1) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.

(2) All pharmacy technicians must complete and report 20 contact hours of approved continuing education obtained during the previous renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 5 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(3) A pharmacy technician may satisfy the continuing education requirements by:

(A) successfully completing the number of continuing education hours necessary to renew a registration as specified in paragraph (2) of this subsection;

(B) successfully completing during the preceding license period, one credit hour for each year of the renewal period, in pharmacy related college course(s); or

(C) taking and passing a pharmacy technician certification examination approved by the board during the preceding renewal period, which shall be equivalent to the number of continuing education hours necessary to renew a registration as specified in paragraph (2) of this subsection.

(4) To renew a registration, a pharmacy technician must report on the renewal application completion of at least twenty contact hours of continuing education. The following is applicable to the reporting of continuing education contact hours: [-]

(A) ~~at~~ least one contact hour of the 20 contact hours specified in paragraph (2) of this subsection shall be related to Texas pharmacy laws or rules; [-]

(B) ~~any~~ continuing education requirements which are imposed on a pharmacy technician as a part of a board order or agreed board order shall be in addition to the requirements of this section; ~~and~~ [-]

(C) for renewals received after August 31, 2020 and before September 1, 2022, a pharmacy technician must have completed the human trafficking prevention course required in §116.002 of the Texas Occupations Code.

(5) Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:

(A) name of participant;

(B) title and date of program;

(C) program sponsor or provider (the organization);

(D) number of hours awarded; and

(E) dated signature of sponsor representative.

(6) The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in paragraph (5) of this subsection or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.

(B) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.

(C) A pharmacy technician who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

(7) The following is applicable if a pharmacy technician fails to report completion of the required continuing education.

(A) The registration of a pharmacy technician who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacy technician shall not be issued a renewal certificate for the license period until such time as the pharmacy technician successfully completes the required continuing education and reports the completion to the board.

(B) A person shall not practice as a pharmacy technician without a current renewal certificate.

(8) A pharmacy technician who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacy technician from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) The pharmacy technician shall submit a petition to the board with his/her registration renewal application which contains:

(i) the name, address, and registration number of the pharmacy technician;

(ii) a statement of the reason for the request for extension;

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacy technician which includes the nature of the physical disability or illness and the dates the pharmacy technician was incapacitated; and

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances and if because of military deployment, documentation of the dates of the deployment.

(B) After review and approval of the petition, a pharmacy technician may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period.

(C) An extension of time to complete continuing education credit does not relieve a pharmacy technician from the continuing education requirement during the current license period.

(D) If a petition for extension to the reporting period for continuing education is denied, the pharmacy technician shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (6) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(9) The following are considered approved programs for pharmacy technicians.

(A) Any program presented by an Accreditation Council for Pharmacy Education (ACPE) approved provider subject to the following conditions.

(i) Pharmacy technicians may receive credit for the completion of the same ACPE course only once during a renewal period.

(ii) Pharmacy technicians who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacy

technicians may receive credit for the same presentation only once during a license period.

(iii) Proof of completion of an ACPE course shall contain the following information:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded;

(V) the assigned ACPE universal program number and a "T" designation indicating that the CE is targeted to pharmacy technicians; and

(VI) either:

(-a-) a dated certifying signature of the approved provider and the official ACPE logo; or

(-b-) the Continuing Pharmacy Education Monitor logo.

(B) Pharmacy related college courses which are part of a pharmacy technician training program or part of a professional degree program offered by a college of pharmacy.

(i) Pharmacy technicians may receive credit for the completion of the same course only once during a license period. A course is equivalent to one credit hour for each year of the renewal period. One credit hour is equal to 15 contact hours.

(ii) Pharmacy technicians who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(C) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy technicians may receive credit for one contact hour towards their continuing education requirement for completion of a CPR course only once during a renewal period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(D) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy technicians may receive credit for twelve contact hours towards their continuing education requirement for completion of an ACLS or PALS course only once during a renewal period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(E) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy technicians may receive credit for four contact hours towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a renewal period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(F) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for attending a full, public board business meeting in its entirety.

(ii) A maximum of six contact hours are allowed for attendance at a board meeting during a renewal period.

(iii) Proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(G) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force.

(ii) Proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(H) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(i) Pharmacy technicians shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.

(ii) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(I) Pharmacy technicians shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(i) Pharmacy technicians shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.

(ii) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded;

(V) a dated certifying signature of the provider; and

(VI) documentation that the program is approved by the other state board of pharmacy.

(J) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self-Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for completion of an ISMP Medication Safety Self-Assessment.

(ii) Proof of completion of an ISMP Medication Safety Self-Assessment shall be:

(I) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(II) a document from ISMP showing completion of an assessment.

(K) Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions.

(i) Pharmacy technicians may receive credit for the completion of the same CME course only once during a license period.

(ii) Pharmacy technicians who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacy technicians may receive credit for the same presentation only once during a license period.

(iii) Proof of completion of a CME course shall contain the following information:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded; and

(V) a dated certifying signature of the approved provider.

(L) In-service education provided under the direct supervision of a pharmacist shall be recognized as continuing education as follows:

(i) Pharmacy technicians shall receive credit for the number of hours provided by pharmacist(s) at the pharmacy technician's place of employment.

(ii) Proof of completion of in-service education shall contain the following information:

(I) name of the participant;

(II) title or description of the program;

(III) completion date of the program;

(IV) name of the pharmacist supervising the in-service education;

(V) number of hours; and

(VI) a dated signature of the pharmacist providing the in-service education.

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

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Allison Vordenbaumen Benz R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



## 22 TAC §297.10

The Texas State Board of Pharmacy proposes amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, establish procedures for a military spouse who is currently registered in good standing by a jurisdiction with registration requirements that are substantially similar to Texas's requirements to obtain an interim pharmacy technician registration, in accordance with Senate Bill 1200.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding registration requirements and to provide clear procedures for military spouses to request an interim pharmacy technician registration. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.10. *Registration for Military Service Members, Military Veterans, and Military Spouses.*

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran, or military spouse may complete the following alternative procedures for registering as a pharmacy technician.

(1) An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current pharmacy technician certification certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(2) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation to include:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter (relating to Fees);

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current pharmacy technician certification certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran or military spouse and who holds a current registration as a pharmacy technician issued by another state or who held a pharmacy technician registration in Texas that expired within the five years preceding the application date may complete the following expedited procedures for registering as a pharmacy technician.

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) have taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate; and

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application.

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees;

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter [~~relating to Fees~~].

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures as specified in §297.3 of this chapter [~~relating to Registration Requirements~~].

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration as follows:

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and registration number of the pharmacy technician;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in

§297.3(d)(3)[§297.3(d)(4)] of this chapter [~~relating to Registration Requirements~~].

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

(e) Interim registration for military spouse. In accordance with §55.0041, Occupations Code, a military spouse who is currently registered in good standing by a jurisdiction with registration requirements that are substantially equivalent to the registration requirements in this state may be issued an interim pharmacy technician registration. The military spouse:

(1) shall provide documentation to include:

(A) a notification of intent to practice form including any additional information requested;

(B) proof of the military spouse's residency in this state;

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

(D) verification from the jurisdiction in which the military spouse holds an active pharmacy technician registration that the military spouse's registration is in good standing;

(2) may not engage in pharmacy technician duties in this state until issued an interim pharmacy technician registration;

(3) may hold an interim pharmacy technician registration 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 of issuance of the interim registration; and

(4) may not renew the interim pharmacy technician registration.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

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For further information, please call: (512) 305-8010



## CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

### 22 TAC §309.5

The Texas State Board of Pharmacy proposes amendments to §309.5, concerning Communication with Prescriber. The amendments, if adopted, remove the section's expiration date, in accordance with House Bill 1264.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering



the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules requiring communication to the prescriber the specific biological product provided to a patient. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§309.5. Communication with Prescriber.*

(a) Not later than the third business day after the date of dispensing a biological product, the dispensing pharmacist or the pharmacist's designee shall communicate to the prescribing practitioner the specific product provided to the patient, including the name of the product and the manufacturer or national drug code number.

(b) The communication must be conveyed by making an entry into an interoperable electronic medical records system or through electronic prescribing technology or a pharmacy benefit management system or a pharmacy record, which may include information submitted for the payment of claims, that a pharmacist reasonably concludes is electronically accessible by the prescribing practitioner. Otherwise, the pharmacist or the pharmacist's designee shall communicate the biological product dispensed to the prescribing practitioner, using fac-

simile, telephone, electronic transmission, or other prevailing means, provided that communication is not required if:

- (1) there is no interchangeable biological product approved by the United States Food and Drug Administration for the product prescribed; or
- (2) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

~~{(e) This section expires September 1, 2019.}~~

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8010



## CHAPTER 315. CONTROLLED SUBSTANCES

### 22 TAC §315.3

The Texas State Board of Pharmacy proposes amendments to §315.3, concerning Prescriptions. The amendments, if adopted, specify that opioid prescriptions for the treatment of pain may not exceed a 10-day supply or provide for a refill, in accordance with House Bills 2088 and 2174, remove the expiration date from the section's title, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding prescriptions for the treatment of pain and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.3. Prescriptions [- Effective September 1, 2016].

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in [the TCSEA,] §481.002(39)(A) of the TCSEA, must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSEA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form.

(3) Except as provided by subsection (f) of this section, a [A] practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription if the practitioner intends for that prescription to be filled immediately, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(4) A schedule II prescription must be dispensed no later than 21 days after the date of issuance or, if the prescription is part of a multiple set of prescriptions, issued on the same day, no later than 21 days after the earliest date on which a pharmacy may dispense the prescription as indicated on each prescription.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in §§481.002(39)(A), (C), (D) of the TCSEA [the TCSEA, §481.002(39)(A), (C), (D)], may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's

direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Except as provided in subsection (f) of this section, Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescription. A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(d) Controlled substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number.

(f) Opioids for the treatment of acute pain.

(1) For the treatment of acute pain, as defined in §481.07636 of the TCSEA, a practitioner may not:

(A) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(B) provide for a refill of the opioid prescription.

(2) Paragraph (1) of this subsection does not apply to a prescription for an opioid approved by the U.S. Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(3) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceed the limits provided by paragraph (1) of this subsection.

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

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TRD-201903305

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



**22 TAC §315.6**

The Texas State Board of Pharmacy proposes amendments to §315.6, concerning Pharmacy Responsibility - Electronic Reporting. The amendments, if adopted, require a pharmacy that does not dispense any controlled substances during a seven day period to submit a zero report to the Prescription Monitoring Program and establish a procedure for requesting a waiver of the zero reporting requirement, in accordance with House Bill 2847.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first

five-year period the rule will be to provide consistency between state law and Board rules regarding the required submission of a zero report to the Prescription Monitoring Program. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§315.6. Pharmacy Responsibility - Electronic Reporting.*

(a) Not later than the next business day after the date a controlled substance prescription is dispensed, a pharmacy must electronically submit to the board the following data elements:

- (1) the prescribing practitioner's DEA registration number including the prescriber's identifying suffix of the authorizing hospital or other institution's DEA number when applicable;
- (2) the official prescription form control number if dispensed from a written official prescription form for a Schedule II controlled substance;
- (3) the board's designated placeholder entered into the control number field if the prescription is electronic and meets the requirements of Code of Federal Regulations, Title 21, Part 1311;
- (4) the patient's name, date of birth, and address including city, state, and zip code; or such information on the animal's owner if the prescription is for an animal;

- (5) the date the prescription was issued and dispensed;
- (6) the NDC # of the controlled substance dispensed;
- (7) the quantity of controlled substance dispensed;
- (8) the pharmacy's prescription number; and
- (9) the pharmacy's DEA registration number.

(b) A pharmacy must electronically correct dispensing data submitted to the board within seven business days of identifying an omission, error, or inaccuracy in previously submitted dispensing data.

(c) If a pharmacy does not dispense any controlled substance prescriptions, the pharmacy must electronically submit to the board a zero report indicating that no controlled substances were dispensed every seven days. If the pharmacy subsequently begins dispensing controlled substances, the pharmacy must begin reporting as specified in subsection (a) of this section.

(d) A pharmacy that does not dispense controlled substances may request a waiver of the zero reporting requirements by submitting a waiver request form and providing any information requested on the form. If the pharmacy subsequently begins dispensing controlled substances, the waiver is no longer valid, and the pharmacy must begin reporting as specified in subsection (a) of this section.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

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For further information, please call: (512) 305-8010



## 22 TAC §315.11

The Texas State Board of Pharmacy proposes amendments to §315.11, concerning Release of Prescription Data - Effective September 1, 2016. The amendments, if adopted, remove the effective date from the section title and clarify that a pharmacist may delegate access to prescription data to a pharmacist-intern or pharmacy technician trainee under the direction of the pharmacist, in accordance with House Bill 2847.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clearer regulatory language and consistency between state law and Board rules regarding pharmacist delegation of access to prescription data. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.11. *Release of Prescription Data* [- *Effective September 1, 2016*].

(a) A person listed under §481.076(a) of the TCSA must show proper need for the information when requesting the release of prescription data. The showing of proper need is ongoing.

(b) A pharmacist may delegate access to prescription data to a pharmacist-intern, pharmacy technician, or pharmacy technician trainee, as defined by Texas Occupations Code, §551.003, employed at the pharmacy and acting under the direction of the pharmacist.

(c) A practitioner may delegate access to prescription data to an employee or other agent of the practitioner and acting at the direction of the practitioner.

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

Filed with the Office of the Secretary of State on September 16, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



## 22 TAC §315.15

The Texas State Board of Pharmacy proposes amendments to §315.15, concerning Access Requirements. The amendments, if adopted, change the effective date of mandatory Prescription Monitoring Program (PMP) database review before dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol, in accordance with House Bill 3284, and clarify that the duty to consult the PMP database does not apply if the patient has a documented diagnosis of sickle cell disease, in accordance with Senate Bill 1564.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the proposed rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the effective date of mandatory PMP database review and exceptions to the duty to consult the PMP database. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 30, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occu-

pations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.15. *Access Requirements.*

(a) Effective March 1, 2020 [~~September 1, 2019~~], a pharmacist before dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol for a patient shall consult the Texas Prescription Monitoring Program (PMP) database to review the patient's controlled substance history. The dispensing pharmacist of a prescription shall be responsible for the review of the PMP database prior to dispensing the prescription, unless the pharmacy has designated another pharmacist whose identity has been recorded in the pharmacy's data processing system as responsible for PMP review.

(b) The duty to consult the PMP database as described in subsection (a) of this section does not apply in the following circumstances:

- (1) the prescribing individual practitioner is a veterinarian;
- (2) it is clearly noted in the prescription record that the patient has a diagnosis of cancer or sickle cell disease or is in hospice care; or
- (3) the pharmacist is unable to access the PMP after making and documenting a good faith effort to do so.

(c) If a pharmacist uses pharmacy management systems that integrate data from the PMP, a review of the pharmacy management system with the integrated data shall be deemed compliant with the review of the PMP database as required under §481.0764(a) of the Texas Health and Safety Code and in subsection (a) of this section.

(d) Pharmacists and pharmacy technicians acting at the direction of a pharmacist may only access information contained in the PMP as authorized in §481.076 of Texas Controlled Substances Act. A person who is authorized to access the PMP may only do so utilizing that person's assigned identifier (i.e., login and password) and may not use the assigned identifier of another person. Unauthorized access of PMP information is a violation of Texas Controlled Substances Act, the Texas Pharmacy Act, and board rules.

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

Filed with the Office of the Secretary of State on September 16, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. DESIGNATING INCURABLE NEURODEGENERATIVE DISEASES

### 25 TAC §1.61

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §1.61, concerning designating incurable neurodegenerative diseases.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3703, 86th Legislature, Regular Session, 2019, which amended Texas Occupations Code, Chapter 169, and requires the Executive Commissioner of HHSC to adopt a rule designating incurable neurodegenerative diseases. The new rule designates incurable neurodegenerative diseases eligible for prescription of low-THC cannabis pursuant to Texas Occupations Code, Chapter 169. The Executive Commissioner charged rule development for the designation of incurable neurodegenerative diseases to DSHS.

#### SECTION-BY-SECTION SUMMARY

The new rule includes a definition for an incurable neurodegenerative disease.

The new rule includes a list of incurable neurodegenerative diseases eligible for prescription of low-THC cannabis pursuant to Texas Occupations Code, Chapter 169.

The new rule provides a method to expand the list to include other incurable neurodegenerative diseases.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

DSHS has insufficient information to determine the proposed rule's effect on the state's economy.

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as the rule does not apply to small or micro-businesses, or rural communities. The rule does not impose any additional costs to small businesses, microbusinesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to implement H.B. 3703 that does not state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner of DSHS Community Health Improvement Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated through this rule is the implementation of H.B. 3703, which designates incurable neurodegenerative diseases eligible for prescription of low-THC cannabis pursuant to Texas Occupations Code, Chapter 169.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require any additional conduct for compliance.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Raiza Ruiz at (512) 776-3829 or at [HPCDPS@dshs.texas.gov](mailto:HPCDPS@dshs.texas.gov) in the DSHS Health Promotion and Chronic Disease Prevention Section.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. When emailing comments, please indicate "Comments on Proposed Rule 19R060" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and H.B. 3703, which requires the Executive Commissioner of HHSC, in consultation with the National Institutes of Health, to adopt a rule designating incurable neurodegenerative diseases eligible

for prescription of low-THC cannabis pursuant to Texas Occupations Code, Chapter 169.

The new section implements Texas Occupations Code, Chapter 169.

#### §1.61. Incurable Neurodegenerative Diseases.

(a) An incurable neurodegenerative disease is a condition, injury, or illness:

(1) that occurs when nerve cells in the brain or peripheral nervous system lose function over time; and

(2) for which there is no known cure.

(b) A qualifying physician under Texas Occupations Code, Chapter 169, may prescribe low-THC cannabis to a patient with a documented diagnosis of one or more of the following incurable neurodegenerative diseases:

(1) Incurable Neurodegenerative Diseases with Adult Onset:

(A) Motor Neuron Disease:

(i) Amyotrophic lateral sclerosis;

(ii) Spinal-bulbar muscular atrophy; and

(iii) Spinal Muscular Atrophy.

(B) Muscular Dystrophies:

(i) Duchenne Muscular Dystrophy;

(ii) Central Core; and

(iii) Facioscapulohumeral Muscular Dystrophy.

(C) Freidrich's Ataxia.

(D) Vascular dementia.

(E) Charcot Marie Tooth and related hereditary neuropathies.

(F) Spinocerebellar ataxia.

(G) Familial Spastic Paraplegia.

(H) Progressive dystonias DYT genes 1 through 20.

(I) Progressive Chorea: Huntington's Disease.

(J) Amyloidoses:

(i) Alzheimer's Disease;

(ii) Prion Diseases:

(I) Creutzfeldt-Jakob Disease;

(II) Gerstmann-Straussler-Scheinker Disease;

(III) Familial or Sporadic Fatal Insomnia; and

(IV) Kuru.

(K) Tauopathies.

(i) Chronic Traumatic Encephalopathy;

(ii) Pick Disease;

(iii) Globular Glial Tauopathy;

(iv) Corticobasal Degeneration;

(v) Progressive Supranuclear Palsy;

(vi) Argyrophilic Grain Disease;

(vii) Neurofibrillary Tangle dementia, also known as Primary Age-related Tauopathy; and

(viii) Frontotemporal dementia and parkinsonism linked to chromosome 17 caused by mutations in MAPT gene.

(L) Synucleinopathies:

(i) Lewy Body Disorders:

(I) Dementia with Lewy Bodies; and

(II) Parkinson's Disease; and

(ii) Multiple System Atrophy.

(M) Transactive response DNA-binding protein-43 (TDP-43) Proteinopathies:

(i) Frontotemporal Lobar Degeneration;

(ii) Primary Lateral Sclerosis; and

(iii) Progressive Muscular Atrophy.

(2) Incurable Neurodegenerative Diseases with Pediatric

Onset:

(A) Mitochondrial Conditions:

(i) Kearns Sayers Syndrome;

(ii) Mitochondrial Encephalopathy Ragged Red

Fiber;

(iii) Mitochondrial Encephalopathy Lactic Acidosis

Stroke;

(iv) Neuropathy, Ataxia, and Retinitis Pigmentosa;

(v) Mitochondrial neurogastrointestinal en-

cephalopathy;

(vi) Polymerase G Related Disorders:

(I) Alpers-Huttenlocher syndrome;

(II) Childhood Myocerebrohepatopathy spec-

trum;

(III) Myoclonic epilepsy myopathy sensory

ataxia; and

(IV) Ataxia neuropathy spectrum;

(vii) Subacute necrotizing encephalopathy, also known as Leigh syndrome;

(viii) Respiratory chain disorders complex I through 4 defects: Co Q biosynthesis defects;

(ix) Thymidine Kinase;

through 14:

(x) Mitochondrial Depletion syndromes types 1

(I) Deoxyguanosine kinase deficiency;

(II) SUCLG1-related mitochondrial DNA depletion syndrome, encephalomyopathic form with methylmalonic aciduria; and

(III) RRM2B-related mitochondrial disease.

(B) Creatine Disorders:

(i) Guanidinoacetate methyltransferase deficiency;

ciency; and

(ii) L-Arginine/glycine amidinotransferase defi-

(iii) Creatine Transporter Defect, also known as SLC 6A8.

(C) Neurotransmitter defects:

(i) Segawa Disease, also known as Dopamine Responsive Dystonia;

(ii) Guanosine triphosphate cyclohydrolase defi-

ciency;

(iii) Aromatic L-amino acid decarboxylase defi-

ciency;

(iv) Monoamine oxidase deficiency;

(v) Biopterin Defects:

(I) Pyruvoyl-tetrahydropterin synthase;

(II) Sepiapterin reductase;

(III) Dihydropteridine reductase; and

(IV) Pterin-4-carbinolamine dehydratase.

(D) Congenital Disorders of Glycosylation.

(E) Lysosomal Storage Diseases:

(i) Mucopolysaccharidosis:

(I) Mucopolysaccharidosis Type I, also known as Hurler Syndrome or Scheie Syndrome;

(II) Mucopolysaccharidosis Type II, also known as Hunter Syndrome;

(III) Mucopolysaccharidosis Type III, also known as Sanfilippo A and B; and

(IV) Mucopolysaccharidosis Type IV, also known as Maroteaux-Lamy; and

(V) Mucopolysaccharidosis Type VII, also known as Sly.

(ii) Oligosaccharidoses:

(I) Mannosidosis;

(II) Alpha-fucosidosis;

(III) Galactosialidosis;

(IV) Asparylglucosaminuria;

(V) Schindler; and

(VI) Sialidosis;

(iii) Mucopolipidoses:

(I) Mucopolipidoses Type II, also known as Inclusion Cell disease; and

(II) Mucopolipidoses Type III, also known as pseudo-Hurler polydystrophy;

(iii) Sphingolipidoses:

(I) Gaucher Type 2 and Type 3;

(II) Neimann Pick Type A and B;

(III) Neimann Pick Type C;

(IV) Krabbe;

(V) GM1 gangliosidosis;

(VI) GM2 gangliosidosis also known as Tay-sachs and Sandhoff Disease;

(VII) Metachromatic leukodystrophy;

(VIII) Neuronal ceroid lipofuscinosis types 1-10 including Batten Disease;

(IX) Farber Disease; and

(v) Glycogen Storage-Lysosomal: Pompe Disease.

(F) Peroxisomal Disorders:

(i) X-linked adrenoleukodystrophy;

(ii) Peroxisomal biosynthesis defects:

(I) Zellweger syndrome;

(II) Neonatal Adrenoleukodystrophy; and

(iii) D Bidirectional enzyme deficiency.

(G) Leukodystrophy:

(i) Canavan disease;

(ii) Pelizaeus-Merzbacher disease;

(iii) Alexander disease;

(iv) Multiple Sulfatase deficiency;

(v) Polyol disorders;

(vi) Glycine encephalopathy, also known as non-ke-  
tototic hyperglycinemia;

(vii) Maple Syrup Urine Disease;

(viii) Homocysteine re-methylation defects;

(ix) Methylenetetrahydrofolate reductase deficiency  
severe variant;

(x) L-2-hydroxyglutaric aciduria;

(xi) Glutaric acidemia type 1;

(xii) 3-hydroxy-3-methylglutaryl-CoA lyase defi-  
ciency;

(xiii) Galactosemia;

(xiv) Manosidosis alpha and beta;

(xv) Salidosis;

(xvi) Peripheral neuropathy types 1 through 4;

(xvii) Pyruvate Dehydrogenase Deficiency;

(xviii) Pyruvate Carboxylase Deficiency;

(xix) Refsum Disease; and

(xx) Cerebral Autosomal Dominant Arteriopathy  
with Sub-cortical Infarcts and Leukoencephalopathy.

(H) Fatty Acid Oxidation:

(i) Trifunctional protein deficiency; and

(ii) Long-chain L-3 hydroxyacyl-CoA dehydroge-  
nase deficiency.

(I) Metal Metabolism:

(i) Wilson Disease;

(ii) Pantothenate Kinase Associated Neurodegener-  
ation; and

(iii) Neurodegeneration with brain iron accumula-  
tion.

(J) Purine and Pyrimidine Defects:

(i) Adenylosuccinate synthase Deficiency;

(ii) 5-aminoimidazole-4-carboxamide ribonu-  
cleotide transformylase deficiency;

(iii) Hypoxanthine-guanine phosphoribosyltrans-  
ferase Deficiency also known as Lesch-Nyhan disease;

(iv) Dihydropyrimidine dehydrogenase Deficiency;  
and

(v) Dihydropyrimidinase Deficiency.

(c) A treating physician of a patient suffering from an incur-  
able neurodegenerative disease not listed in subsection (b) of this sec-  
tion may submit a request to the department to have a disease added.

(d) A request under subsection (c) of this section shall  
be submitted to the department on a form prescribed by the de-  
partment, which can be found on the department's website at  
<https://www.dshs.texas.gov/chronic/default.shtm>.

(e) After review of the submitted documentation, the depart-  
ment may request additional information or make a determination.

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

Filed with the Office of the Secretary of State on September 13,  
2019.

TRD-201903252

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 776-3829



## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

#### 25 TAC §703.14, §703.24

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amendments to 25 Texas Administrative Code §703.14(c) and §703.24(a) relating to the Institute's consideration and approval of a grant recipient's request to extend its grant contract and the process for a grant recipient to report and receive reimbursement for expenses the grant recipient paid prior to the current financial status reporting period.

#### Background and Justification

The proposed change to §703.14(c) provides a process for the Institute to review and approve a grant recipient's request to extend the grant recipient's grant contract termination date even if the grant recipient has fiscal or programmatic reports pending approval by the Institute. Currently, Texas Administrative Code



§703.14 requires a grant recipient to be in "good fiscal and programmatic standing" before the Institute may approve a request to extend the contract term. (Since the approval provides only additional time to complete the grant project and does not provide any additional funds, CPRIT refers to these requests as "no cost extensions.") Grant recipients must submit regular fiscal and programmatic reports to the Institute at specified times during their grant contract. Report due dates are set in Texas Administrative Code Chapters 701-703. In some instances, the Institute may not have approved one or more fiscal or programmatic reports at the time that the grant recipient requests an extension of the grant contract. The proposed change allows the Institute to consider and approve a no cost extension request while other reports are pending approval. Approval of a no cost extension remains at the discretion of the Institute. The Institute will retain documentation of the request and approval as part of the grant record.

The proposed change to §703.24(a) clarifies the process for the Institute to consider and approve a grant recipient's reimbursement request for an otherwise allowable cost paid by the grant recipient prior to the current reporting period. The proposed change clarifies that the Institute may consider and approve reimbursement after the grant recipient provides a written explanation for failing to timely seek reimbursement during the fiscal quarter it paid the expense. The Institute will retain documentation of the request and approval as part of the grant record.

#### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated due to enforcing the rule will be clarifying processes regarding extending the grant contract termination deadline and submitting requests for reimbursement of costs incurred and paid by the grant recipient.

#### Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule changes will not affect small businesses, micro businesses, or rural communities.

#### Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule changes will be in effect:

- (1) the proposed rule changes will not create or eliminate a government program;
- (2) implementation of the proposed rule changes will not affect the number of employee positions;
- (3) implementation of the proposed rule changes will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule changes will not affect fees paid to the agency;
- (5) the proposed rule changes will not create new rules;

(6) the proposed rule changes will not expand existing rules;

(7) the proposed rule changes will not change the number of individuals subject to the rules; and

(8) The rule changes are unlikely to have a significant impact on the state's economy. Although these changes are likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than October 28, 2019. The Institute asks parties filing comments to indicate whether they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to [kdoyle@cpriti.texas.gov](mailto:kdoyle@cpriti.texas.gov). Comments may be submitted by facsimile transmission to (512) 475-2563.

#### Statutory Authority

The Institute proposes the rule changes under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

#### *§703.14. Termination, Extension, Close Out of Grant Contracts, and De-Obligation of Grant Award Funds.*

(a) The termination date of a Grant Contract shall be the date stated in the Grant Contract, except:

(1) The Chief Executive Officer may elect to terminate the Grant Contract earlier because the Grant Recipient has failed to fulfill contractual obligations, including timely submission of required reports or certifications;

(2) The Institute terminates the Grant Contract because funds allocated to the Grant Award are reduced, depleted, or unavailable during the award period, and the Institute is unable to obtain additional funds for such purposes; or

(3) The Institute and the Grant Recipient mutually agree to terminate the Grant Contract earlier.

(b) If the Institute elects to terminate the Grant Contract pursuant to subsection (a)(1) or (2) of this section, then the Chief Executive Officer shall notify the Grant Recipient in writing of the intent to terminate funding at least thirty (30) days before the intended termination date. The notice shall state the reasons for termination, and the procedure and time period for seeking reconsideration of the decision to terminate. Nothing herein restricts the Institute's ability to terminate the Grant Contract immediately or to seek additional remedies if justified by the circumstances of the event leading to early termination.

(c) The Institute may approve the Grant Recipient's written request to extend the termination date of the Grant Contract to permit the Grant Recipient additional time to complete the work of the project.

(1) A no cost extension may be granted if the Grant Recipient is in good fiscal and programmatic standing. ~~[The Institute's decision to approve or deny a no cost extension request is final.]~~

(A) If a Grant Recipient is not in good fiscal and programmatic standing, the Grant Recipient may petition the Chief Executive Officer in writing to consider the no cost extension. The Grant

Recipient's petition must show good cause for failing to be in good fiscal and programmatic standing.

(B) Upon a finding of good cause, the Chief Executive Officer may consider the request. If a no cost extension is approved under this subsection, the Chief Executive Officer must notify the Oversight Committee in writing and provide justification for the approval.

(2) The Grant Recipient may request a no cost extension no earlier than 180 days and no later than thirty (30) days prior to the termination date of the Grant Contract.

(A) If a Grant Recipient fails to request a no cost extension within the required timeframe, the Grant Recipient may petition the Chief Executive Officer in writing to consider the no cost extension. The Grant Recipient's petition must show good cause for failing to submit the request within the timeframe specified in subsection (c) of this section.

(B) Upon a finding of good cause, the Chief Executive Officer may consider the request. If a no cost extension request is approved under this subsection, the Chief Executive Officer must notify the Oversight Committee in writing and provide justification for the approval.

(3) The Institute may approve one or more no cost extensions. The duration of each no cost extension may be no longer than six months from the termination date of the Grant Contract, unless the Institute finds that special circumstances justify authorizing additional time to complete the work of the project. If a grant recipient requests a second no cost extension or requests a no cost extension greater than six months, the grantee must provide good cause for approving the request.

(4) If the Institute approves the request to extend the termination date of the Grant Contract, then the termination date shall be amended to reflect the change.

(5) Nothing herein prohibits the Institute and the Grant Recipient from taking action more than 180 days prior to the termination date of the Grant contract to extend the termination date of the Grant Contract. Approval of an extension must be supported by a finding of good cause and the Grant Contract shall be amended to reflect the change.

(6) The Institute's decision to approve or deny a no cost extension request is final.

(d) The Grant Recipient must submit a final Financial Status Report and final Grant Progress Report as well as any other required reports as specified in the Grant Contract. For purposes of this rule, the final Grant Progress Report and other required reports shall be collectively referred to as "close out documents."

(1) The final Financial Status Report shall be submitted to the Institute within ninety (90) days of the end of the state fiscal quarter that includes the termination date of the Grant Contract. The Grant Recipient's failure to submit the Financial Status report within thirty (30) days following the due date specified in this subsection will waive reimbursement of project costs incurred during the reporting period. The Institute may approve additional time to submit the final Financial Status Report if the Grant Recipient can show good cause for failing to timely submit the final Financial Status Report.

(2) Close out documents must be submitted within ninety (90) days of the termination date of the Grant Contract. The final reimbursement payment shall not be made until all close out documents have been submitted and approved by the Institute. Failure to submit one or more close out documents within 180 days of the Grant Contract termination date shall result in the Grant Recipient being ineligi-

ble to receive new Grant Awards or continuation Grant Awards until such time that the close out documents are submitted unless the Institute waives the final submission of close out documents by the Grant Recipient.

(A) Approval of the Grant Recipient's request to waive the submission of close out documents is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(B) The Oversight Committee shall be notified in writing of the Grant Recipient's waiver request and the Chief Executive Officer's decision to approve or reject the waiver request.

(C) Unless the Oversight Committee votes by a simple majority of members present and able to vote to overturn the Chief Executive Officer's decision regarding the waiver, the Chief Executive Officer's decision shall be considered final.

(e) The Institute may make upward or downward adjustments to the Allowable Costs requested by the Grant Recipient within ninety (90) days following the approval of the close out reports or the final Financial Status Report, whichever is later.

(f) Nothing herein shall affect the Institute's right to disallow costs and recover Grant Award funds on the basis of a later audit or other review or the Grant Recipient's obligation to return Grant Award funds owed as a result of a later refund, correction, or other transaction.

(g) Any Grant Award funds paid to the Grant Recipient in excess of the amount to which the Grant Recipient is finally determined to be entitled under the terms of the Grant Contract constitute a debt to the state. If not paid within a reasonable period after demand, the Institute may reduce the debt owed by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the Grant Recipient; or

(3) Other action permitted by law.

(h) Grant Award funds approved by the Oversight Committee and specified in the Grant Contract but not spent by the Grant Recipient at the time that the Grant Contract is terminated are considered de-obligated for the purposes of calculating the maximum amount of annual Grant Awards and the total amount authorized by Section 67, Article III, Texas Constitution. Such de-obligated funds are available for all purposes authorized by the statute.

(i) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

#### §703.24. *Financial Status Reports.*

(a) The Grant Recipient [Recipients] shall report expenditures to be reimbursed with Grant Award funds on the quarterly Financial Status Report form. The Grant Recipient must report all expenses for which it seeks reimbursement that the Grant Recipient paid during the fiscal quarter indicated on the quarterly Financial Status Report form.

(1) Expenditures shall be reported by budget category consistent with the Grant Recipient's Approved Budget.

(2) If the Grant Recipient seeks reimbursement for an expense it paid prior to the period covered by the current quarterly Financial Status Report but did not previously report to the Institute, the Grant Recipient must provide a written explanation for failing to claim the prior payment in the appropriate period.

(A) The Grant Recipient must submit the written explanation with any supporting documentation at the time that the Grant Recipient files its current Financial Status Report.

(B) The Institute shall consider the explanation and may approve reimbursement for the otherwise eligible expense. The Institute's decision whether to reimburse the expense is final.

(3) [(2)] All expenditures must be supported with appropriate documentation showing that the costs were incurred and paid. A Grant Recipient that is a public or private institution of higher education as defined by §61.003, Texas Education Code is not required to submit supporting documentation for an individual expense totaling less than \$750 in the "supplies" or "other" budget categories.

(4) [(3)] The Financial Status Report and supporting documentation must be submitted via the Grant Management System, unless the Grant Recipient is specifically directed in writing by the Institute to submit or provide it in another manner.

(5) [(4)] The Institute may request in writing that a Grant Recipient provide more information or correct a deficiency in the supporting documentation for a Financial Status Report. If a Grant Recipient does not submit the requested information within 21 days after the request is submitted, the Financial Status Report will be disapproved by the Institute.

(A) Nothing herein restricts the Institute from disapproving the FSR without asking for additional information or prior to the submission of additional information.

(B) Nothing herein extends the FSR due date.

(6) [(5)] The requirement to report and timely submit quarterly Financial Status Reports applies to all Grant Recipients, regardless of whether Grant Award funds are disbursed by reimbursement or in advance of incurring costs.

(b) Quarterly Financial Status Reports shall be submitted to the Institute within ninety (90) days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review expenditures and supporting documents to determine whether expenses charged to the Grant Award are:

(1) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(2) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(c) A Grant Award with a Grant Contract effective date within the last quarter of a state fiscal year (June 1 - August 31) will have an initial financial reporting period beginning September 1 of the following state fiscal year.

(1) A Grant Recipient that incurs Authorized Expenses after the Grant Contract effective date but before the beginning of the next state fiscal year may request reimbursement for those Authorized Expenses.

(2) The Authorized Expenses described in paragraph (1) of this subsection must be reported in the Financial Status Report reflecting Authorized Expenses for the initial financial reporting period beginning September 1.

(d) Except as provided herein, the Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the Financial Status Report for that quarter is not submitted to the Institute within thirty (30) days of the Financial Status Report due date. Waiver of reimbursement of project costs incurred during

the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.

(1) For purposes of this rule, the "Financial Status Report due date" is ninety (90) days following the end of the state fiscal quarter.

(2) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original Financial Status Report due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the Financial Status Report.

(3) A Grant Recipient may appeal the waiver of its right to reimbursement of project costs.

(A) The appeal shall be in writing, provide good cause for failing to submit the Financial Status Report within thirty (30) days of the Financial Status Report due date, and be submitted via the Grant Management System.

(B) The Chief Executive Officer may approve the appeal for good cause. The decision by the Chief Executive Officer to approve or deny the grant recipient's appeal shall be in writing and available to the Grant Recipient via the Grant Management System.

(C) The Chief Executive Officer's decision to approve or deny the Grant Recipient's appeal is final, unless the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision by the Oversight Committee.

(D) The Grant Recipient may request that the Oversight Committee reconsider the Chief Executive Officer's decision regarding the Grant Recipient's appeal. The request for reconsideration shall be in writing and submitted to the Chief Executive Officer within 10 days of the date that the Chief Executive Officer notifies the Grant Recipient of the decision regarding the appeal as noted in subparagraph (C) of this paragraph.

(E) The Chief Executive Officer shall notify the Oversight Committee in writing of the decision to approve or deny the Grant Recipient's appeal. The notice should provide justification for the Chief Executive Officer's decision. In the event that the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision, the Chief Executive Officer shall provide the Grant Recipient's written request to the Oversight Committee at the same time.

(F) The Grant Recipient's request for reconsideration is deemed denied unless three or more Oversight Committee members request that the Chief Executive Officer add the Grant Recipient's request for reconsideration to the agenda for action at the next regular Oversight Committee meeting. The decision made by the Oversight Committee is final.

(G) If the Grant Recipient's appeal is approved by the Chief Executive Officer or the Oversight Committee, the Grant Recipient shall report the project costs and provide supporting documentation for the costs incurred during the reporting period covered by the appeal on the next available financial status report to be filed by the Grant Recipient.

(H) Approval of the waiver appeal does not connote approval of the expenditures; the expenditures and supporting documentation shall be reviewed according to subsection (b) of this section.

(I) This subsection applies to any waivers of the Grant Recipient's reimbursement decided by the Institute on or after September 1, 2015.

(4) Notwithstanding subsection (c) of this section, in the event that the Grant Recipient and Institute execute the Grant Contract

after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding Financial Status Report(s). The approval shall be in writing and maintained in the Grants Management System. The Chief Program Officer's approval may cover more than one Financial Status Report and more than one fiscal quarter.

(5) In order to receive disbursement of grant funds, the most recently due Financial Status Report must be approved by the Institute.

(e) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

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

Filed with the Office of the Secretary of State on September 12, 2019.

TRD-201903224

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 305-8487



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER Q. GENERAL PROPERTY AND CASUALTY RULES

###### DIVISION 3. MULTIPLE LINES

###### 28 TAC §§5.9750 - 5.9752

The Texas Department of Insurance proposes new 28 TAC §§5.9750 - 5.9752, concerning notice to policyholders and agents of certain changes to property and casualty insurance policies. Sections 5.9750 - 5.9752 implement Senate Bill 417, 85th Legislature, Regular Session (2017).

EXPLANATION. New §§5.9750 - 5.9752 clarify what constitutes a material change under SB 417, ensure consistency with the conspicuousness requirements in the Business and Commerce Code, and clarify the requirements for a clear, plain-language notice of a change in coverage from replacement cost to actual cash value.

SB 417 amended the Insurance Code regarding notice to policyholders and agents of certain changes to property and casualty insurance policies. Before SB 417, insurers that wanted to provide less coverage to an existing policyholder were required to cancel or nonrenew the policy and give the policyholder a new offer. SB 417 created an exception that allows insurers to avoid

canceling or nonrenewing the policy by providing policyholders and agents with a notice of material change describing the reductions in coverage.

Under SB 417, a "material change" on renewal is not a nonrenewal or cancellation if the insurer provides the policyholder with written notice of any material change in each form of the policy offered to the policyholder on renewal from the form of the policy held immediately before renewal. SB 417 requires that the notice of material change be clear, provided in a conspicuous place, and in plain language. It also requires the insurer to provide the notice at least 30 days before the renewal date.

Insurers are only required to provide the notice of material change under SB 417 if they offer a policy that reduces coverage, changes coverage conditions, or changes the duties of the policyholder, but do not provide notice of nonrenewal or cancellation. If the insurer chooses instead to nonrenew or cancel and issue a new policy, the notice requirements in SB 417 would not apply. Instead, the insurer would comply with the notice requirements for cancellation or nonrenewal in Insurance Code Chapter 551.

Section 5.9750. The proposal adds new §5.9750, which clarifies the applicability of the proposed sections and provides examples of material changes. Section 5.9750 is necessary to prevent confusion about notices of material change subject to the proposed sections, and to clarify the types of changes that require a notice.

Section 5.9751. The proposal adds new §5.9751, which provides requirements for the notice of material change. It harmonizes the conspicuousness requirement in the proposed sections and Insurance Code §§551.1055(c)(1), 2002.001(b)(2)(A), and 2002.102(c)(1) with the definition of "conspicuous" in Business and Commerce Code §1.201(b)(10). It also clarifies that "material change" includes material changes to the entire policy or to any part of it. Section 5.9751 is necessary to ensure a consistent interpretation of "conspicuous" between the Insurance Code, the Business and Commerce Code, and the proposed sections. It is also necessary to ensure that material changes to one type of risk or coverage" for example, changes to coverage for a roof from replacement cost to actual cash value" are subject to the same notice requirements as material changes to the policy as a whole.

Section 5.9752. The proposal adds new §5.9752, which clarifies that a change from replacement cost coverage to actual cash value coverage is a material change and provides requirements for the notice. For a change from replacement cost to actual cash value coverage, §5.9752 requires that a notice of material change explain the terms "replacement cost" and "actual cash value" in plain language. It also requires that if the notice uses the term "depreciation," it must also include a plain-language explanation of that term. New §5.9752 also requires that a notice of material change that describes a change from replacement cost to actual cash value coverage must include at least one plain-language example that shows the difference in dollar amounts between coverage before and after the material change. Section 5.9752 includes a sample figure to illustrate a possible way to list the amounts a policyholder might receive for a total roof replacement. Insurers are not limited to using the sample figure, and they may use other content and formatting.

New §5.9752 clarifies that a change in coverage from replacement cost to actual cash value is a material change that requires notice under SB 417. Unlike replacement cost coverage,

actual cash value coverage includes a deduction for depreciation, which reduces coverage under a policy. However, the inquiries and complaints TDI has received regarding replacement cost, actual cash value, and depreciation indicate that the differences in coverage are not easy for consumers to understand. As a result, §5.9752 is also necessary to ensure that consumers get clear descriptions and illustrations of actual cash value and replacement cost coverage. Without those explanations, consumers are unlikely to appreciate the impact of a change in coverage from replacement cost to actual cash value, and they are unlikely to be able to make informed coverage choices.

**Informal Comments.** TDI received comments on an informal draft posted on TDI's website on January 16, 2019. Although TDI specifically requested comments on anticipated costs of compliance with the rule and how the rule describes replacement cost and actual cash value, no comments addressed costs. Two comments requested that the rule be drafted to clearly not apply to surplus lines policies, as the underlying statute does not apply. One comment supported the draft rule text and made additional suggestions to enhance clarity. One comment requested more insight about what qualifies as a reduction in coverage. The proposed rule reflects those comments.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Marianne Baker, director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the proposed sections, other than that imposed by the statute. This determination was made because the proposed sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

Ms. Baker does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new sections are in effect, Ms. Baker expects that enforcing and administering the proposed sections will have the public benefits of ensuring that TDI's rules conform to Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417, and are consistent with the conspicuousness requirements in Business and Commerce Code §1.201(b)(10). Ms. Baker also expects that enforcing and administering the proposed sections will have the public benefit of helping consumers understand the impact of material changes to their policies, especially for changes as significant as moving from replacement cost coverage to actual cash value coverage. This knowledge will enable consumers to shop for and buy policies with the coverage they need, which will reduce the number of unpaid claims and encourage insurers to offer the coverages consumers want.

Ms. Baker expects that the proposed new sections will not increase the cost of compliance with Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417. SB 417 creates an optional system that leaves in place the current system. Insurers are free to choose the method by which they make material changes to policies. Insurers are only required to provide the notice of material change if they choose it instead of a notice of nonrenewal. SB 417 gives insurers the option of providing a notice of material change instead of a notice of nonrenewal, which would otherwise be required for reductions in coverage. But insurers may still choose to send a notice of

nonrenewal if they are reducing coverage at renewal and, at the same time, an offer to issue a new policy with different coverage.

For insurers that choose to send a notice of material change, the proposed sections clarify the statutory requirements that the notice be conspicuous, in plain language, and clearly indicate the material change. These clarifications will enhance regulatory and industry consistency, leveling the playing field and reducing uncertainty and costs of compliance.

Because insurers can choose whether to provide notice of material change under SB 417 and the proposed sections, or instead choose to provide notice of nonrenewal and offer a new policy; and because the proposed sections are necessary to implement SB 417 by clarifying its requirements, any cost associated with the clarifications the proposed sections require do not result from the enforcement or administration of the proposed new sections.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new sections will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Insurers that are reducing coverage at renewal may choose to issue a notice of material change under SB 417 and the proposed rule, or they may choose to send a notice of nonrenewal and an offer to issue a new policy with different coverage. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a cost on regulated persons. Even if it did, no additional rule amendments are required under Government Code §2001.0045 because proposed §§5.9750 - 5.9752 are necessary to implement legislation. The proposed rule implements Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417, 85th Legislature, Regular Session (2017), by clarifying the law's requirements.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed sections are in effect the proposal:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation in §§5.9750 - 5.9752 to implement SB 417, 85th Legislature, Regular Session (2017);
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or

require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m., Central time, on October 28, 2019. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5 p.m., Central time, on October 28, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new §§5.9750 - 5.9752 under Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417; and Insurance Code §§551.112, 2002.102(e), 36.002(2)(E), and 36.001.

Insurance Code §551.103(3) provides that if an insurer, without the policyholder's consent, reduces or restricts coverage under the policy by endorsement or other means, then the insurer has canceled the policy. SB 417 amended §551.103(3) to provide an exception for changes to the policy on renewal for which the insurer provides a written notice of material change under §551.1055.

SB 417 added definitions of "material change" to Insurance Code §§551.1055, 2002.001, and 2002.102. Under those definitions, a "material change" is a change to a policy that, with respect to a prior or existing policy reduces coverage, changes conditions of coverage, or changes the policyholder's duties.

SB 417 added requirements for notice of material change to policyholders under Insurance Code §§551.1055, 2002.001, and 2002.102. The notice of material change must appear in a conspicuous place, clearly indicate each material change to the policy, be written in plain language, and be provided to the policyholder not later than the 30th day before the renewal or expiration date.

Under Insurance Code §§551.1055, 2002.001, and 2002.102, the insurer must provide each of its agents with a written notice that clearly indicates each material change being made to the policy form, in addition to the notice to the policyholder.

Insurance Code §551.112 allows the Commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §2002.102(e) allows the Commissioner to adopt rules as necessary to implement §2002.102.

Insurance Code §36.002(2)(E) allows the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Insurance Code Title 10, Subtitles B, C, D, E, F, H, or I. (Insurance Code §§1901.001 et seq., 1951.001 et seq., 2001.001 et seq., 2051.001 et seq., 2101.001 et seq., 2251.001 et seq., or 2301.001 et seq.)

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

CROSS-REFERENCE TO STATUTE. Sections 5.9750 - 5.9752 implement the amendments to Insurance Code §§551.103, 551.1055, 551.110, 2002.001, and 2002.102 enacted by SB 417, 85th Legislature, Regular Session (2017).

§5.9750. Notice of Material Change-Applicability and Examples.

(a) A notice of material change is not a notice of cancellation or nonrenewal. Instead, it is a notice provided under:

- (1) Insurance Code §551.1055;
- (2) Insurance Code §2002.001; or
- (3) Insurance Code §2002.102.

(b) This section, §5.9751 and §5.9752 of this title (relating to Notice of Material Change-Requirements and Notice of Material Change-Change from Replacement Cost to Actual Cash Value) apply to policies and insurers that are subject to Insurance Code Chapter 551, Subchapter C; and Chapter 2002.

(c) Examples of material changes include:

- (1) changes from replacement cost to actual cash value;
- (2) reductions in policy limits;
- (3) increases in deductibles; or
- (4) reductions in coverage, including:

(A) limiting the people or entities insured under the policy;

(B) removing an item or act that was previously covered under the policy; or

(C) limiting the types of coverage under the policy.

§5.9751. Notice of Material Change-Requirements.

(a) A notice of material change must be conspicuous, as that term is defined in Business and Commerce Code §1.201(b)(10).

(b) If the notice of material change is included in a renewal notice, the first page of the renewal notice must include:

(1) the notice of material change; or

(2) conspicuous text that clearly indicates the location of the notice of material change in the renewal offer.

(c) A material change might be to the entire policy, or to any part of it.

§5.9752. Notice of Material Change-Change from Replacement Cost to Actual Cash Value.

(a) A material change includes a change from replacement cost coverage to actual cash value coverage. The change might be to the entire policy, or to any part of it. This section applies only to changes from replacement cost to actual cash value.

(b) A notice of material change must explain the terms "replacement cost" and "actual cash value." Using plain language, the notice must at a minimum explain that:

(1) for replacement cost, the policy will pay to repair or replace the damaged item based on the current cost of the item; and

(2) for actual cash value, the policy will pay less based on the item's characteristics, such as age or condition.

(c) If the term "depreciation" is in the notice, the notice must use plain language to explain that "depreciation" is the amount of value that an item loses over time, typically through use, wear and tear, or by becoming obsolete.

(d) A notice of material change must include at least one plain-language example that shows the difference in dollar amounts between coverage before and after the material change.

(1) See Figure: 28 TAC §5.9752(d)(1) for one possible way to list the amounts a policyholder might receive for a total roof replacement. Insurers are not limited to using the Figure as the example, and they may use other content and formatting.  
Figure: 28 TAC §5.9752(d)(1)

(2) If the policy includes a depreciation schedule, the notice of material change must list the form name and page number that contains the depreciation schedule.

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903269

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 27, 2019

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



## CHAPTER 21. TRADE PRACTICES SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

The Texas Department of Insurance proposes to amend 28 TAC §§21.5001 - 21.5003, 21.5010 - 21.5013, and 21.5030; repeal §21.5020 and §21.5031, and adopt new §§21.5020 - 21.5023, 21.5040, and 21.5050, concerning out-of-network claim dispute resolution. The amendments and repeals implement Senate Bill 1264, 86th Legislature, Regular Session (2019).

**EXPLANATION.** The new sections, amendments, and repeals are necessary to implement SB 1264, which prohibits balance billing for certain health benefit claims under certain plans; amends the current mediation process set out in the Insurance Code and provides for health benefit plan issuers and administrators to mediate disputes with out-of-network providers that are facilities; and provides for health benefit plan issuers and administrators to resolve disputes through binding arbitration with out-of-network providers that are not facilities.

SB 1264 applies to health benefit plans offered by insurers and health maintenance organizations (HMOs), and to plans other than those offered by insurers or HMOs that the department regulates. The amendments apply to health care and medical services or supplies provided on or after January 1, 2020. SB 1264 addresses dispute resolution in cases involving emergency medical services, services provided by out-of-network providers at in-network facilities, and out-of-network laboratory and imaging services provided by network physicians or providers. SB 1264 requires the department to establish a portal on its website to handle mediation and arbitration requests.

The amendments included in this proposal implement provisions that are required by SB 1264, including conforming amendments in 28 TAC Subchapter PP, and new divisions to implement the new mandatory arbitration procedures, required explanation

of benefit notices created by the bill, and the benchmarking database. The department will propose and adopt conforming amendments under SB 1264 for other rule chapters separately, and those changes are outside the scope of this rule proposal. As provided by SB 1264, the Commissioner will conduct a study on the impacts of the bill, which is not part of this rule proposal. The department encourages parties to settle payment disputes before engaging in mandatory mediation or mandatory binding arbitration.

### *Division 1. General Provisions.*

**Section 21.5001. Purpose.** Amendments to this section clarify the purpose of the subchapter. The amendments reflect that the subchapter also addresses requesting, initiating, and conducting mandatory binding arbitration, as added by SB 1264. The rules no longer include preliminary procedures for mandatory mediation because SB 1264 removed the role of the State Office of Administrative Hearings from the out-of-network mediation dispute resolution process. Section 21.5001 is also amended to clarify that the subchapter now includes implementation of additional Insurance Code provisions outside of Chapter 1467 that relate to the new explanations of benefits required by Insurance Code Chapters 1271, 1301, 1467, 1551, 1575, and 1579 as proposed in new Division 5. Section 21.5001 is also amended to clarify that the subchapter now includes implementation for the submission of information for the benchmarking database in Insurance Code §1467.006.

**Section 21.5002. Scope.** Amendments to this section clarify the scope of the subchapter. Amending §21.5002 implements SB 1264, including changes to the applicability of health benefit plans offered by HMOs and for exclusive provider benefit plans. The amendments include notice that the proposed changes are prospective and apply to a health care or medical service or supply provided on or after January 1, 2020. The existing rule remains in effect for services provided before January 1, 2020.

**Section 21.5003. Definitions.** Amendments to this section update the definitions for the subchapter. Amending §21.5003 implements SB 1264, including removing definitions no longer necessary and to reflect new definitions in amended Insurance Code Chapter 1467. The proposed amendments refer to Insurance Code §1467.001 or other code citations found in that section. Some of the definitions in Insurance Code §1467.001, including "enrollee" and "party" were amended by SB 1264. Amendments to the definition of "out-of-network claim" refer to claims for payment by an out-of-network provider. SB 1264 expanded Insurance Code Chapter 1467 to include HMOs and exclusive provider benefit plans. The defined term "preferred provider" is removed because the term is no longer used in the text.

### *Division 2. Mediation Process.*

**Section 21.5010. Qualified Mediation Claim Criteria.** This section clarifies what constitutes a claim eligible for mediation. Amending §21.5010 implements SB 1264 and Insurance Code Chapter 1467, Subchapter B, relating to mandatory mediation for out-of-network facilities. Section 21.5010(a) is amended to be consistent with Insurance Code §1467.050 and §1467.051. The mediation process no longer applies to enrollees and only applies to a health benefit claim submitted by an out-of-network provider that is a facility. Existing §21.5010(c) is proposed to be amended because Insurance Code §1467.051(c) and (d) were repealed by SB 1264, and subsection (c) was based on those provisions. The amended §21.5010(c) states for clarity that uncovered claims are not eligible for mediation under the

subchapter. Existing §21.5010(d) is proposed to be removed because a threshold amount, as provided by that provision, no longer applies to mediation claims.

Section 21.5011. Mediation Request Procedure. This section is amended to require the use of the department's online portal to request mediation, instead of the form currently required by the section. Amending §21.5011 implements SB 1264 and Insurance Code Chapter 1467, Subchapter B, relating to mandatory mediation for out-of-network facilities. Insurance Code §1467.0505 calls for the Commissioner to establish and administer a mediation program and to establish a portal on the department's internet website through which mediation requests may be submitted.

Section 21.5011(a) is revised to update mediation request requirements and address notice requirements. Proposed subsection (a)(1) requires an out-of-network provider that is a facility or a health benefit plan issuer or administrator to request mediation on the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov), and it provides that the party requesting mediation must complete the mediation request information required on the department's website to be eligible for mediation. Proposed subsection (a)(2) provides that the party who requests a mediation must send the notice of mediation to the other party, consistent with Insurance Code §1467.054(b-1). The department will receive the required notice when the party requesting mediation completes the request through the department's website. Subsection (a)(2) also clarifies that the proper address for a provider to send written notice is in the explanation of benefits, as specified in new §21.5040. A health benefit plan issuer or administrator requesting mediation is required to send the notice to the address the provider designates in the claim, or to the last known address that the health benefit plan issuer or administrator has on file for the provider if no address for mediation notice is provided in the claim.

The data elements listed in current subsection (a) and required in the existing form to request mediation are proposed for deletion, because SB 1264 repealed Insurance Code §1467.054(b). Insurance Code §1467.054(b) addressed the mediation request form, but mediation must now be requested through the department's online portal.

Proposed amendments to §21.5011(b) prescribe the required information that must be included in an initial mediation request, which is similar to the content of the existing mediation request form. The request entered through the department's website must be complete and incomplete requests may be rejected. Information from the enrollee's health benefit plan identification card is required. This information will help the parties and the department determine if the health benefit plan is one regulated by the department. Insurance Code §1467.054(b-1) requires the person who requests mediation to provide written notice on the date the mediation is requested in the form and manner provided by Commissioner rule.

Proposed §21.5011(c) addresses notice of teleconference outcome. The subsection specifies additional information the parties must submit to the department at the completion of the informal settlement teleconference period. The department needs this information to implement and administer the mediation program as required by Insurance Code §1467.0505.

Proposed §21.5011(d) provides mediator selection procedures. Insurance Code §1467.053 requires that the department be notified if a mediator has not been selected by mutual agreement on or before the 30th day after the date mediation is requested.

Subsection (d)(1) requires that the parties notify the department through the department's website if the parties agree to settle, agree on selection of a mediator, or agree to extend the deadline to have the department select a mediator and notify the department of new deadlines. In order to efficiently implement and administer the mediator program, mediation fees must be paid to the mediator promptly if the Commissioner is required to select a mediator.

Proposed §21.5011(e) requires the parties notify the department through the department's website of a mediation agreement or informal teleconference settlement. The submission of information will help the department efficiently implement and administer the mediation program.

Proposed §21.5011(f) specifies the procedures for mediator approval and removal. Insurance Code §1467.0505 requires the Commissioner to maintain a list of qualified mediators. The proposed rules allow for flexibility in how mediators will be added to the list, subject to the statutory qualification standards in Insurance Code §1467.052.

Proposed §21.5011(g) provides specific guidance on certain elements of the mediation process. Subsection (g)(1) requires an out-of-network provider to use best efforts to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process. Resolving disputes in the internal appeal process will make for more efficient administration of the mediation process. The proposed requirement does not require unreasonable efforts that would cause delay under Insurance Code Chapter 1467.

Proposed §21.5011(g)(2) and (3) clarify that written submission of information to a mediator is acceptable and remind parties that Insurance Code §1467.056 establishes the factors to be considered in mediation.

Proposed §21.5011(g)(4) requires parties to check the list of qualified mediators and notify the department if there are conflicts. The parties are in the best position to know if there is a conflict of interest as contemplated by Insurance Code §1467.052(c). The specified time line will allow for timely selection of a mediator and will help the department efficiently administer the mediator program.

Proposed §21.5011(g)(5) allows parties to aggregate claims between the same facility and same health benefit plan issuer or administrator. This provision is based on Insurance Code §1467.056(c), which allows for the mediation of more than one claim between the parties during a mediation.

Existing §21.5011(c) is redesignated as new §21.5011(h). Reference to the toll-free telephone number is removed and instead the department's website is provided. This is consistent with SB 1264 changing the process to focus on requests being submitted through a portal on the department's website.

Section 21.5012. Informal Settlement Teleconference. This section is revised to specify that all parties must participate in an informal settlement teleconference under Insurance Code §1467.054(d). Amending §21.5012 implements SB 1264 and Insurance Code Chapter 1467, subchapter B, relating to mandatory mediation for out-of-network facilities. In contrast to Insurance Code §1467.084(d) and new proposed §21.5022, which require a health benefit plan issuer or administrator to make reasonable efforts to arrange a teleconference for a requested arbitration, Insurance Code §1467.054(d) and proposed §21.5012 provide that all parties arrange a workable date



and time. An additional amendment is proposed to clarify that the deadline to have an informal telephone conference can be extended by agreement of the parties, consistent with Insurance Code §1467.055(k). The requirement to provide a toll-free telephone number is removed. This requirement is no longer necessary, because SB 1264 has removed enrollees from the process. The department assumes that providers and health benefit plan issuers and administrators have more experience with claims, and technological solutions exist beyond toll-free phone conferences that may be used by the parties for the informal settlement.

Section 21.5013. Mediation Participation. This section is revised for consistency with Insurance Code §1467.101, as amended by SB 1264. Subsection §21.5013(a) is deleted, because SB 1264 removed the role of the State Office of Administrative Hearings from the out-of-network mediation dispute resolution process. Amending §21.5013 implements SB 1264 and Insurance Code Chapter 1467, Subchapter B, relating to mandatory mediation for out-of-network facilities.

*Repeal of Current Division 3. Required Notice of Claims Dispute Resolution Notice.*

Section 21.5020. Required Notice of Claims Dispute Resolution. Current Division 3 and §21.5020 are proposed for repeal to implement SB 1264. SB 1264 repealed Insurance Code §1467.0511, which required notice and information to the enrollee. Because enrollees are no longer party to the out-of-network claims dispute resolution process, current Division 3 and §21.5020 are no longer necessary.

*New Division 3. Arbitration Process.*

Proposed new Division 3 contains rules for required arbitration of certain out-of-network claims. The division is structured to be similar to the existing mediation rules in Division 2, but applies to nonfacility claims, as provided by SB 1264. As also provided in SB 1264, certain out-of-network facility claims are eligible for mandatory mediation under Insurance Code Chapter 1467, Subchapter B, and certain out-of-network claims not made by facilities are eligible for mandatory binding arbitration under Insurance Code Chapter 1467, subchapter B-1.

Section 21.5020. Qualified Arbitration Claim Criteria. This section provides the criteria established by statute for a claim to be eligible for mandatory binding arbitration under the subchapter. New §21.5020 implements SB 1264 and Insurance Code Chapter 1467, subchapter B-1, relating to mandatory arbitration for certain out-of-network claims. The criteria specified in the section are consistent with Insurance Code §1467.081 and §1467.084. Proposed §21.5020(a)(1) is consistent with Insurance Code §1467.084(a)(2). Proposed §21.5020(a)(2) is consistent with Insurance Code §1467.084(a)(1). Proposed §21.5020(b) is consistent with Insurance Code §1467.084(a) and clarifies that mandatory binding arbitration under the subchapter is intended to apply to claims where the health benefit plan issuer or administrator makes a payment and there is no dispute as to whether the claim is covered. However, the parties may agree to have the arbitrator decide the issue of coverage. Proposed §21.5020(c) is consistent with Insurance Code §1467.087(d).

Section 21.5021. Arbitration Request Procedure. This section provides for the use of the arbitration request portal and its requirements, and the procedures for arbitrator selection and the arbitration process. New §21.5021 implements SB 1264 and In-

surance Code Chapter 1467, subchapter B-1, relating to mandatory arbitration for certain out-of-network claims.

Subsection (a)(1) of the proposed section specifies that an arbitration request must be made by completing the information required on the department's website. Insurance Code §1467.082 requires the Commissioner to establish and administer an arbitration program to resolve disputes over out-of-network provider charges, and to establish a portal on the department's website. Proposed §21.5021(a)(2) provides that the notice of arbitration must be sent to the other party, consistent with Insurance Code §1467.084(c). The department will receive the required notice when the party who requests an arbitration completes the request through the department's website. Subsection (a)(2) also clarifies that the proper address for a provider to send written notice is in the explanation of benefits. A health benefit plan issuer or administrator requesting arbitration is required to send notice to the address the provider designates in the claim, or to the last known address that health benefit plan issuer or administrator has on file for the provider if no address for arbitration notice is provided in the claim.

Proposed §21.5021(b) prescribes the required information that must be included in the initial arbitration request. The subsection specifies the types of information that are required, including basic provider and claim information. The request entered through the department's website must be complete and incomplete requests may be rejected. Information from the enrollee's health benefit plan identification card is required. This information will help parties and the department determine if the benefit plan is one regulated by the department.

The notice of teleconference outcome is described in proposed new §21.5021(c). The subsection specifies the information the parties must submit to the department. The department needs this information to implement and administer the arbitration program, as required by Insurance Code §1467.082.

Proposed §21.5021(d) provides for arbitrator selection procedures. Insurance Code §1467.086 requires the department be notified if an arbitrator has not been selected by mutual agreement on or before the 30th day after the date the arbitration is requested. The proposed rule requires notification to the department if the parties have settled, agreed to their own arbitrator, or have extended the deadlines as provided by Insurance Code §1467.087(c). In order to efficiently implement and administer the arbitration program, arbitrator fees must be paid to the arbitrator promptly if the Commissioner is required to select the arbitrator. Immediate payment may encourage qualified arbitrators to seek placement on the list.

Proposed §21.5021(e) requires certain information to be sent to the department. Section 21.5021(e)(1) prescribes the process for arbitrators to send these notices. Insurance Code §1467.088(c) requires that an arbitrator must provide written notice in the form and manner prescribed by the Commissioner. Under proposed §21.5021(e)(2), the parties must notify the department when a settlement occurs before a decision. The statute also requires that parties provide written notice to the department if the parties settle before a decision. The submission of information will help the department efficiently implement and administer the arbitration program.

Proposed §21.5021(f) specifies the procedures for arbitrator approval and removal. Insurance Code §1467.082 requires the Commissioner to maintain a list of qualified arbitrators. The proposed rules allow for flexibility in how the Commissioner will add

arbitrators to the list, subject to the statutory qualification standards in Insurance Code §1467.086.

Proposed §21.5021(g) provides specific guidance on certain elements of the arbitration process. The proposed rules require a provider to use best efforts to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process. The department believes that resolving disputes in the internal appeal process will make for more efficient administration of the arbitration process. The proposed requirement does not require unreasonable efforts that would cause delay under Insurance Code Chapter 1467.

Proposed §21.5021(g)(2) clarifies that written submission of information to an arbitrator is required. Insurance Code §1467.087(a) states that the arbitrator will provide the date for submission of all considered information.

Proposed §21.5021(g)(3) requires the arbitrator to consider all the factors required by the statute, in accordance with Insurance Code §1467.083.

Proposed §21.5021(g)(4) is intended to provide procedural protections of all parties during the arbitration process. Consistent with Insurance Code §1467.083 and §1467.087, the arbitrator must provide each party an opportunity to review the written information submitted by the other party, submit additional written information, and respond in writing to the arbitrator on the arbitrator's specified time line.

Proposed §21.5021(g)(5) requires parties to check the list of qualified arbitrators and notify the department of any conflicts. The parties are in the best position to know if there is a conflict of interest, as contemplated by Insurance Code §1467.086.

Proposed §21.5021(g)(6) states the consequences in the arbitration decision for parties that do not participate in good faith. Without sufficient information, the arbitrator will be limited to basing their decision on the information received. An arbitrator can make a decision even if a party fails to participate.

Proposed §21.5021(g)(7) provides for the submission of multiple claims between the same provider and same health benefit plan issuer or administrator. Insurance Code §1467.084(e) allows for the submission of multiple claims to arbitration in one proceeding, with certain limitations.

Proposed §21.5021(h) provides the department's website address for assistance. This is consistent with SB 1264 changing the process to focus on requests being submitted through a portal on the department's website.

Section 21.5022. Informal Settlement Teleconference. This section describes which parties must participate in an informal settlement teleconference under Insurance Code §1467.084(d). New §21.5022 implements SB 1264 and Insurance Code Chapter 1467, subchapter B-1, relating to mandatory arbitration for certain out-of-network claims. Insurance Code §1467.084(d) requires the health benefit plan issuer or administrator make a reasonable effort to arrange the teleconference. The proposed section permits extension of the deadline, in accordance with Insurance Code §1467.087(c).

Section 21.5023. Arbitration Participation. This section requires arbitration participants not to engage in bad faith conduct. New §21.5023 implements SB 1264 and Insurance Code Chapter 1467, subchapter B-1, relating to mandatory arbitration for certain out-of-network claims. New §21.5023 is like existing §21.5013, as Insurance Code §1464.101 prohibits bad faith

conduct for both the mediation and arbitration process. The statutorily prohibited conduct is restated for emphasis.

#### *Division 4. Complaint Resolution.*

Section 21.5030. Complaint Resolution. This section is amended to reflect changes to Insurance Code §1467.151 made by SB 1264. The proposed amendments clarify that the complaint process applies to both the revised mediation process and the new mandatory binding arbitration process under SB 1264. Subsection §21.5030(a) is amended to simplify the language and reflects the increased experience with claims among parties who may request mediation or arbitration under the subchapter, reducing the information required to file a complaint. Because SB 1264 requires providers and health benefit plan issuers or administrators to use the department's website, amending the complaint instructions in §21.5030 allows for more efficient administration of the statute. Other amendments are proposed to make the section apply more broadly to both the mediation and arbitration procedures.

Section 21.5031. Department Outreach. This section is proposed for repeal. Repealing §21.5031 is necessary to implement amendments made by SB 1264 to Insurance Code §1467.151(a)(2). Repealing the section removes outreach efforts to enrollees from the rules because enrollees are no longer part of the out-of-network claims dispute resolution process.

#### *New Division 5. Explanation of Benefits.*

New Division 5, relating to explanation of benefits, is proposed to provide requirements for the required explanation of benefits required by certain health benefit plan issuers and administrators.

Section 21.5040. Required Explanation of Benefits. This section implements requirements established by Insurance Code §§1271.008, 1301.010, 1551.015, 1575.009, and 1579.009. The section requires a statement of the applicable billing prohibition and a disclosure of the total amount the provider may bill the enrollee under the health benefit plan, and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total. The health benefit plan issuer or administrator must provide the statement by the date the health benefit plan issuer or administrator makes a payment, as applicable. The section requires the health benefit plan issuer or administrator to provide a specific statement related to the availability of mediation or arbitration. The statement requires the health benefit plan issuer or administrator provide contact information for where the mediation or arbitration request notice must be sent, as required by amended §21.5011 and new §21.5021.

#### *New Division 6. Benchmarking.*

New Division 6, relating to benchmarking, is proposed to provide requirements on data submission by health benefit plan issuers and administrators to the organization selected by the Commissioner to maintain a benchmarking database.

Section 21.5050. Submission of Information. This section implements new requirements in Insurance Code §1467.006, created by SB 1264. Data reporting is needed for the mandatory binding arbitration process. Data in the benchmarking database must be obtained so that arbitrators can consider billed charges for services provided in the same geozip area, in accordance with Insurance Code §1467.083; however, the data collection will be consistent with Insurance Code §1467.006 and Insurance Code §1467.083. Health benefit plan issuers and administrators must submit their 2019 plan-year data to the benchmarking data-

base organization by February 1, 2020. After February 1, 2020, health benefit plan issuers and administrators must submit data monthly to the benchmarking database organization, or as required by the selected benchmarking organization.

In addition to the amendments to specific sections previously noted, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the department's current style and to improve the rule's clarity.

The department received comments in response to questions the department posted on its website on July 15, 2019. The department also received oral comments at a stakeholder meeting on July 29, 2019, and additional comments were sought and received until August 9, 2019. The department considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Chris Herrick, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed new sections, amendments, and repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Herrick does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new sections, amendments, and repeals are in effect, Mr. Herrick expects that administering the proposed new sections, amendments, and repeals will have the public benefit of ensuring that the department's rules conform to Insurance Code Chapter 1467 and SB 1264, allowing for the efficient mediation and arbitration of certain out-of-network health claims. Mr. Herrick expects that the proposed new sections will not increase the cost of compliance with SB 1264 because they do not impose requirements beyond those in the statute. Insurance Code Chapter 1467 requires the use of a portal for mediation and arbitration for certain claims. As a result, any cost associated with complying with the process does not result from the enforcement or administration of the proposed new sections, amendments, and repeals.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined that the proposed new sections, amendments, and repeals will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Because the proposed rule is designed to implement Insurance Code §§1271.008, 1301.010, 1551.015, 1575.009, 1579.009 and Insurance Code Chapter 1467, any economic impact results from the statute itself. The new sections, amendments, and repeals do not impose requirements beyond those in statute and will not create an increase in cost of compliance with statute. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that this proposal does not impose requirements beyond those in the statute, and therefore this rule does not impose a cost on regulated persons. No additional rule amendments are required under

Government Code §2001.0045 because all costs result from the statute and proposed new sections, amendments, and repeals are necessary to implement legislation. The proposed rule implements Insurance Code §§1271.008, 1301.010, 1551.015, 1575.009, 1579.009 and Insurance Code Chapter 1467, as added and amended by SB 1264. Insurance Code §1467.003 provides that Government Code §2001.0045 does not apply to a rule adopted under Insurance Code Chapter 1467.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will create a government program;
- will not require the creation of new employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on October 28, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2814 at 9:30 a.m. central time, on October 23, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

## **DIVISION 1. GENERAL PROVISIONS**

### **28 TAC §§21.5001 - 21.5003**

**STATUTORY AUTHORITY.** The department proposes §§21.5001 - 21.5003 under Insurance Code §§1301.007, 1467.003, and 36.001.

Insurance Code §1301.007 states that the Commissioner may adopt rules necessary to implement Chapter 1301.

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

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5001 and §21.5002 implement Insurance Code Chapters 1271, 1301, 1467, 1551, 1575, and 1579, and SB 1264, 86th Legislature, Regular Session (2019). The proposed amendments to 28 TAC §21.5003 implement Insurance Code §1467.001 and SB 1264, 86th Legislature, Regular Session (2019).

§21.5001. *Purpose.*

The [As authorized by Insurance Code §1467.003 (concerning Rules), the] purpose of this subchapter is to:

(1) prescribe the process for requesting, initiating, and conducting [preliminary procedures for the] mandatory mediation and mandatory binding arbitration of claims as authorized in Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution); [and]

(2) facilitate the process for the investigation and review of a complaint filed with the department that relates to the settlement of an out-of-network claim under Insurance Code Chapter 1467;[-]

(3) prescribe the contents of the explanation of benefits as required by Insurance Code §1271.008 (concerning Balance Billing Prohibition Notice), §1301.010 (concerning Balance Billing Prohibition Notice), §1551.015 (concerning Balance Billing Prohibition Notice), §1575.009 (concerning Balance Billing Prohibition Notice), and §1579.009 (concerning Balance Billing Prohibition Notice); and

(4) facilitate the collection of data as authorized in Insurance Code §1467.006 (concerning Benchmarking Database).

§21.5002. *Scope.*

(a) This subchapter applies to a qualified mediation claim or qualified arbitration claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans) including an exclusive provider benefit plan; [or]

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage); or[-]

(3) offered by an HMO operating under Insurance Code Chapter 843 (concerning Health Maintenance Organizations).

(b) This subchapter does not apply to a claim for health benefits that is not a covered claim under the terms of the health benefit plan coverage.

(c) Except as provided in §21.5050 of this title (relating to Submission of Information), this [This] subchapter applies to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2020 [2018]. A claim for health care or medical services or supplies provided before January 1, 2020 [2018], is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose.

§21.5003. *Definitions.*

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

(1) Administrator--Has the meaning assigned by Insurance Code §1467.001 (concerning Definitions). [An administering firm or a claims administrator for a health benefit plan, other than a health maintenance organization (HMO) plan, providing coverage under Insurance

Code Chapters 1551, (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage).]

(2) Arbitration--Has the meaning assigned by Insurance Code §1467.001.

[(2) Chief administrative law judge--The chief administrative law judge of the State Office of Administrative Hearings.]

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies, provided that the care, services, or supplies:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Diagnostic imaging provider--Has the meaning assigned by Insurance Code §1467.001.

(5) Diagnostic imaging service--Has the meaning assigned by Insurance Code §1467.001.

(6) [(4)] Emergency care--Has the meaning assigned by Insurance Code §1301.155 (concerning Emergency Care).

(7) [(5)] Emergency care provider--Has the meaning assigned by Insurance Code §1467.001. [A physician, health care practitioner, facility, or other health care provider who provides and bills an enrollee, administrator, or health benefit plan for emergency care.]

(8) [(6)] Enrollee--Has the meaning assigned by Insurance Code §1467.001. [An individual who is eligible to receive benefits through a preferred provider benefit plan or a health benefit plan under Insurance Code Chapters 1551, 1575, or 1579.]

(9) [(7)] Facility--Has the meaning assigned by Health and Safety Code §324.001 (concerning Definitions).

(10) [(8)] Health benefit plan--A plan that provides coverage under:

(A) a health benefit plan offered by an HMO operating under Insurance Code Chapter 843;

(B) [(A)] a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans); or

(C) [(B)] a plan, other than an HMO plan, under Insurance Code Chapters 1551, 1575, or 1579.

(11) [(9)] Facility-based provider--Has the meaning assigned by Insurance Code §1467.001. [A physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.]

[(10) Health care practitioner-- An individual who is licensed to provide health care services.]

(12) [(11)] Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841 (concerning Life, Health, or Accident Insurance Companies); 842 (concerning Group Hospital Service Corporations); 884 (concerning Stipulated Premium Insurance Companies); 885 (concerning Fraternal Benefit Societies); 982 (concerning

Foreign and Alien Insurance Companies); or 1501 (concerning Health Insurance Portability and Availability Act), that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan, including an exclusive provider benefit plan, under Insurance Code Chapter 1301.

(13) [(12)] Mediation--Has the meaning assigned by Insurance Code §1467.001. [A process in which an impartial mediator facilitates and promotes agreement between the insurer offering a preferred provider benefit plan, or the administrator, and a facility-based provider or emergency care provider or the provider's representative to settle a qualified claim of an enrollee.]

(14) [(13)] Mediator--Has the meaning assigned by Insurance Code §1467.001. [An impartial person who is appointed to conduct mediation under Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution).]

(15) [(14)] Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by an out-of-network provider or a non-network provider [a facility-based provider or emergency care provider that is not contracted as a preferred provider with a preferred provider benefit plan or contracted with an administrator].

[(15)] Preferred provider--A facility, facility-based provider, or emergency care provider that contracts on a preferred-benefit basis with an insurer issuing a preferred provider benefit plan under Insurance Code Chapter 1301 to provide medical care or health care to enrollees covered by a health insurance policy.]

(16) Out-of-network provider--Has the meaning assigned by Insurance Code §1467.001.

(17) Party--Has the meaning assigned by Insurance Code §1467.001.

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

Filed with the Office of the Secretary of State on September 16, 2019.

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James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 27, 2019

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



## DIVISION 2. MEDIATION PROCESS

### 28 TAC §§21.5010 - 21.5013

STATUTORY AUTHORITY. The department proposes amendments to §§21.5010 - 21.5013 under Insurance Code §§1467.003, 1467.0505, 1467.054, 1467.151, and 36.001.

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

Insurance Code §1467.0505 states that the Commissioner may adopt rules, forms, and procedures necessary for the implementation and administration of the mediation program.

Insurance Code §1467.054 states that the Commissioner may provide by rule the form and manner the written notice sent to the department and the other party by a person who requests a mediation.

Insurance Code §1467.151(b) states that the Commissioner may maintain information specified by the section, including information about a health benefit plan issuer or administrator or out-of-network provider that the Commissioner requires by rule.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5010 implement Insurance Code §§1467.050, 1467.051, and 1467.054; and SB 1264, 86th Legislature, Regular Session (2019). The proposed amendments to 28 TAC §21.5011 implement Insurance Code §§1467.050 - 1467.060 and SB 1264, 86th Legislature, Regular Session (2019). The proposed amendments to 28 TAC §21.5012 implement Insurance Code §1467.054 and §1467.055 and SB 1264, 86th Legislature, Regular Session (2019). The proposed amendments to 28 TAC §21.5013 implement Insurance Code §1467.101 and SB 1264, 86th Legislature, Regular Session (2019).

#### §21.5010. *Qualified Mediation Claim Criteria.*

(a) Required criteria. An out-of-network provider that is a facility or a health benefit plan issuer or administrator [enrollee] may request mandatory mediation of an out-of-network claim under §21.5011 of this title (relating to Mediation Request [Form and] Procedure) if the claim complies with the criteria specified in this subsection. An out-of-network claim that complies with those criteria is referred to as a "qualified mediation claim" in this subchapter.

(1) The out-of-network health benefit claim must be for:

(A) [health care or] emergency care; [or]

(B) an out-of-network laboratory service; or

(C) [(B)] an out-of-network diagnostic imaging service [a health care or medical service or supply, provided by a facility-based provider in a facility that is a preferred provider with the insurer or that has a contract with the administrator].

(2) There is an [The aggregate] amount billed by the provider and unpaid by the health benefit plan issuer or administrator after [for which the enrollee is responsible to the facility-based provider or emergency care provider for the out-of-network claim, not including] copayments, deductibles, and coinsurance, for which an enrollee may not be billed [or amounts paid by an insurer or administrator directly to the enrollee, must be greater than \$500].

(b) Submission of multiple claim forms. The use of more than one form in the submission of a claim, as defined in §21.5003 of this title (relating to Definitions), does not prevent eligibility of a claim for mandatory mediation under this subchapter if the claim otherwise meets the requirements of this section.

(c) Ineligible claims. This division does not require a health benefit plan issuer or administrator to pay for an uncovered service or supply.

[(1) An out-of-network claim is not eligible for mandatory mediation under this subchapter if:]

[(A) the facility-based provider has provided a complete disclosure to an enrollee under Insurance Code §1467.051(c)]

(concerning Availability of Mandatory Mediation; Exception), and this subsection before providing the health care or medical service or supply or both and has obtained the enrollee's written acknowledgment of that disclosure; and]

[(B) the amount billed by the facility-based provider is less than or equal to the maximum amount specified in the disclosure.]

[(2) A complete disclosure under paragraph (1) of this subsection must:]

[(A) explain that the facility-based provider does not have, as applicable, either a contract with the enrollee's health benefit plan as a preferred provider or a contract with the administrator of the plan, other than an HMO plan, provided under Insurance Code Chapters 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage);]

[(B) disclose projected amounts for which the enrollee may be responsible; and]

[(C) disclose the circumstances under which the enrollee would be responsible for those amounts.]

[(d) Qualification continues. A claim that meets the criteria to be a qualified claim after claim adjudication by the insurer or administrator does not lose that status by virtue of the aggregate amount for which the enrollee is responsible being reduced below the thresholds set out in this section without the consent of the enrollee.]

#### *§21.5011. Mediation Request [Form and] Procedure.*

(a) Mediation request and notice. [form. The Commissioner adopts by reference Form No. CP029 (Health Insurance Mediation Request Form), which is available at [www.tdi.texas.gov/consumer/epm-mediation.html](http://www.tdi.texas.gov/consumer/epm-mediation.html). Form No. CP029 (Health Insurance Mediation Request Form) requires information necessary for the department to properly identify the qualified claim, including:]

(1) An out-of-network provider that is a facility or a health benefit plan issuer or administrator may request mediation. To be eligible for mediation, the party requesting mediation must complete the mediation request information required on the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov), as specified in subsection (b) of this section.

(2) The party who requests the mediation must provide written notice to each other party on the date the mediation is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting mediation must send the mediation notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting mediation in the claim, a health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting mediation must send the mediation notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

[(1) the name and contact information, including a telephone number, of the enrollee requesting mediation;]

[(2) a brief description of the qualified claim to be mediated, including the amount sought from the enrollee, not including co-payments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee;]

[(3) the name and contact information, including a telephone number, of the requesting enrollee's counsel, if the enrollee retains counsel;]

[(4) the name of the facility-based provider or emergency care provider;]

[(5) the name of the insurer or administrator;]

[(6) the name and address of the facility where services were rendered; and]

[(7) an authorization allowing the department to disclose the enrollee's protected health information or other confidential information for the purpose of mediating the claim at issue to the facility-based provider or emergency care provider, facility-based provider's or emergency care provider's representative or representatives, the enrollee's health benefit plan's insurer or administrator, the benefit plan's representative or representatives, the insurer or administrator's representative or representatives, the appointed mediator, and the State Office of Administrative Hearings.]

(b) Submission of request. The requesting party must submit information necessary to complete the initial mediation request, including: [An enrollee may submit a request for mediation by completing and submitting Form No. CP029 (Health Insurance Mediation Request Form) as provided in this subsection. The request may be submitted:]

(1) facility details, including identifying the facility type, facility contact information, and facility representative information [by mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091];

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and [by fax to 512-490-1007];

(3) relevant information from the enrollee's health benefit plan identification card or other similar document, including plan number and group number. [by email to [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov); or]

[(4) online, when the department makes Form No. CP029 (Health Insurance Mediation Request Form) available to be completed and submitted online.]

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received, the date of the teleconference, and settlement offer amounts.

(d) Mediator selection.

(1) The parties must notify the department through the department's website on or before 30 days from the date the mediation is requested if:

(A) the parties agree to a settlement;

(B) the parties agree to the selection of a mediator; or

(C) the parties agree to extend the deadline to have the department select a mediator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign a mediator after the 30th day from the date the mediation is requested. The parties must pay the nonrefundable mediator's fee to the mediator promptly when the mediator is assigned. Failure to pay the mediator promptly when the mediator is assigned constitutes bad faith participation.

(e) Submission of information. Parties must submit information, as specified on the department's website, to the department at the completion of the mediation or informal settlement, including:

(1) name of the mediator, date when the mediator was selected, when the mediation was held, the date of the agreement, the date of the mediator report, and when payment was made; and

(2) the agreement including the original billed amount, payment amount, and the total agreed amount.

(f) Mediator approval and removal.

(1) Mediators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or through the department's procurement process. An individual or entities that employ mediators may apply for approval.

(2) A list of qualified mediators will be maintained on the department's website. A mediator who no longer meets the qualification requirements in Insurance Code §1467.052 (concerning Mediator Qualifications) will be terminated. A mediator must notify the department immediately if the mediator wants to voluntarily withdraw from the list.

(g) Mediation process.

(1) An out-of-network provider that is a facility must use best efforts to resolve a claim payment dispute through a health benefit plan issuer's or administrator's internal appeal process before requesting mediation.

(2) The parties may submit written information to a mediator concerning the amount charged by the out-of-network provider for the health care or medical service or supply and the amount paid by the health benefit plan issuer or administrator.

(3) The parties must evaluate the factors specified in Insurance Code §1467.056 (concerning Matters Considered in Mediation; Agreed Resolution).

(4) Each party is responsible for reviewing the list of mediators and notifying the department within five days of the request for mediation whether there is a conflict of interest with any of the mediators on the list to avoid the department assigning a mediator with a conflict of interest.

(5) The parties may agree to aggregate claims between the same facility and same health benefit plan issuer or administrator for mediation.

(h) [(e)] Assistance. Assistance with submitting a request for mediation is available on [at] the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov) [toll-free telephone number, 800-252-3439].

*§21.5012. Informal Settlement Teleconference.*

All parties [An insurer or administrator] subject to mandatory mediation requested by an out-of-network provider that is a facility or a health benefit plan issuer or administrator [an enrollee] under this subchapter must use best efforts to coordinate the informal settlement teleconference required by Insurance Code §1467.054 (concerning Request and Preliminary Procedures for Mandatory Mediation). The parties or representatives of the parties must arrange a date and time when the parties or representatives of the parties [by:]

[(1)] [arranging insurer or administrator; the enrollee or the enrollee's representative, if the enrollee or the enrollee's representative chooses to participate; and the facility-based provider or emergency care provider or the facility-based provider's or emergency

care provider's representative] can participate in the informal settlement teleconference, which must occur not later than the 30th day after the date on which the party [enrollee] submitted a request for mediation, unless the parties agree to extend the deadline.[: and]

[(2) providing a toll-free telephone number for participation in the informal settlement teleconference.]

*§21.5013. Mediation Participation.*

[(a) An insurer or administrator subject to mediation under this subchapter must participate in mediation in good faith and is subject to any rules adopted by the chief administrative law judge under Insurance Code §1467.003 (concerning Rules).]

[(b)] Under Insurance Code §1467.101 (concerning Bad Faith), conduct that constitutes bad faith mediation includes failing to:

(1) participate in the mediation;

(2) provide information that the mediator believes is necessary to facilitate an agreement; or

(3) designate a representative participating in the mediation with full authority to enter into any mediated agreement.

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

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903295

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 27, 2019

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



## DIVISION 3. REQUIRED NOTICE OF CLAIMS DISPUTE RESOLUTION

### 28 TAC §21.5020

STATUTORY AUTHORITY. The department proposes the repeal of Division 3 and 28 TAC §21.5020 under Insurance Code §1467.003 and §36.001.

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

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

CROSS-REFERENCE TO STATUTE. The repeal of 28 TAC §21.5020 implements the repeal of Insurance Code §1467.0511 by SB 1264, 86th Legislature, Regular Session (2019).

*§21.5020. Required Notice of Claims Dispute Resolution.*

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

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James Person

General Counsel

Texas Department of Insurance

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



### DIVISION 3. ARBITRATION PROCESS

#### 28 TAC §§21.5020 - 21.5023

**STATUTORY AUTHORITY.** The department proposes new §§21.5020 - 21.5023 under Insurance Code §§1467.003, 1467.082, 1467.084, 1467.088, 1467.151, and 36.001.

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

Insurance Code §1467.082 states that the Commissioner may adopt rules, forms, and procedures necessary for the implementation and administration of the arbitration program.

Insurance Code §1467.084(c) states that the Commissioner may provide by rule the form and manner the written notice sent to the department and the other party by the person who requests the arbitration.

Insurance Code §1467.084(e) states the Commissioner may adopt rules providing requirements for submitting multiple claims to arbitration in one proceeding.

Insurance Code §1467.088(c) states that the arbitrator must provide written notice in the form and manner prescribed by commissioner rule of the reasonable amount for the services or supplies and the binding award amount, and that if the parties settle before a decision, the parties shall provide written notice in the form and manner prescribed by commissioner rule of the amount of the settlement.

Insurance Code §1467.151(b) states that the Commissioner may maintain information specified by the section, including information about a health benefit plan issuer or administrator or out-of-network provider that the Commissioner requires by rule.

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

**CROSS-REFERENCE TO STATUTE.** The proposed new 28 TAC §21.5020 implements Insurance Code §§1467.081, 1467.082, and 1467.084; and SB 1264, 86th Legislature, Regular Session (2019). The proposed new 28 TAC §21.5021 implements Insurance Code §§1467.081 - 1467.089 and SB 1264, 86th Legislature, Regular Session (2019). The proposed new 28 TAC §21.5022 implements Insurance Code §1467.084 and §1467.087 and SB 1264, 86th Legislature, Regular Session (2019). The proposed new 28 TAC §21.5023 implements Insurance Code §1467.101 and SB 1264, 86th Legislature, Regular Session (2019).

#### §21.5020. Qualified Arbitration Claim Criteria.

(a) Required criteria. An out-of-network provider that is not a facility or a health benefit plan issuer or administrator may

request mandatory binding arbitration of an out-of-network claim under §21.5021 of this title (relating to Arbitration Request Procedure) if the claim complies with the criteria specified in this section. An out-of-network claim that complies with those criteria is referred to as a "qualified arbitration claim" in this subchapter.

(1) The health benefit claim must be for:

(A) emergency care;

(B) a health care or medical service or supply provided by a facility-based provider in a facility that is a participating provider;

(C) an out-of-network laboratory service; or

(D) an out-of-network diagnostic imaging service; and

(2) The health benefit claim must be for a charge billed by the provider and unpaid by the health benefit plan issuer or administrator after copayments, coinsurance, and deductibles for which an enrollee may not be billed.

(b) Availability. Not later than the 90th day after the date an out-of-network provider receives the initial payment for a health care or medical service or supply, the out-of-network provider or the health benefit plan issuer or administrator may request arbitration of a settlement of an out-of-network health benefit claim. The initial payment could be zero dollars if the allowable amount was applied to an enrollee's deductible.

(c) Ineligible claims. Unless otherwise agreed to by the parties, an arbitrator may not determine whether a health benefit plan covers a particular health care or medical service or supply.

#### §21.5021. Arbitration Request Procedure.

(a) Arbitration request and notice.

(1) An out-of-network provider or a health benefit plan issuer or administrator may request arbitration. To be eligible for arbitration, the party requesting arbitration must complete the arbitration request information required on the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov), as specified in subsection (b) of this section.

(2) The party who requests the arbitration must provide written notice to each other party on the date the arbitration is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting arbitration must send the arbitration notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting arbitration in the claim, the health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting arbitration must send the arbitration notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

(b) Submission of request. The requesting party must submit information necessary to complete the initial arbitration request, including:

(1) provider details, including identifying the provider type, provider contact information, and provider representative information;

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and



(3) relevant information from the enrollee's health benefit plan identification card or a similar document, including plan number and group number.

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received, the date of the teleconference, and settlement offer amounts.

(d) Arbitrator selection.

(1) The parties must notify the department, through the department's website, on or before 30 days from the date arbitration was requested if:

- (A) the parties agree to a settlement;
- (B) the parties agree to the selection of an arbitrator; or
- (C) the parties agree to extend the deadline to have the department select an arbitrator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign an arbitrator after the 30th day from the date the arbitration is requested. The parties must pay the nonrefundable arbitrator's fee to the arbitrator promptly when the arbitrator is assigned. Failure to pay the arbitrator promptly when the arbitrator is assigned constitutes bad faith participation, and the arbitrator may award the binding amount to the other party.

(e) Submission of information.

(1) The arbitrator must submit information, as specified on the department's website, to the department at the completion of the arbitration, including:

(A) name of the arbitrator, date when the arbitrator was selected, when the arbitration was held, the date of the decision, the date of the arbitrator report, and when payment was made; and

(B) the written decision, including any final offers made during the health benefit plan issuer's or administrator's internal appeal process or informal settlement, reasonable amount for the services or supplies, and the binding award amount.

(2) If the parties settle the dispute before the arbitrator's decision, the parties must submit information, as specified on the department's website, to the department, including:

- (A) the date of the settlement; and
- (B) the amount of the settlement.

(f) Arbitrator approval and removal.

(1) Arbitrators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or the department's procurement process. An individual or entities that employ arbitrators may apply for approval.

(2) A list of qualified arbitrators will be maintained on the department's website. An arbitrator who no longer meets the qualification requirements in Insurance Code §1467.086 (concerning Selection and Approval of Arbitrator) will be terminated. An arbitrator must notify the department immediately if the arbitrator wants to voluntarily withdraw from the list.

(g) Arbitration process.

(1) An out-of-network provider must use best efforts to resolve a claim payment dispute through a health benefit plan issuer's or

administrator's internal appeal process before a party requests arbitration.

(2) The parties must submit written information to an arbitrator concerning the amount charged by the out-of-network provider for the health care or medical service or supply, and the amount paid by the health benefit plan issuer or administrator.

(3) The arbitrator must evaluate the factors specified in Insurance Code §1467.083 (concerning Issue to Be Addressed; Basis for Determination).

(4) The arbitrator must provide the parties an opportunity to review the written information submitted by the other party, submit additional written information, and respond in writing to the arbitrator on the time line set by the arbitrator.

(5) Each party is responsible for reviewing the list of arbitrators and notifying the department within five days of the request for arbitration if there is a conflict of interest with any of the arbitrators on the list to avoid the department assigning an arbitrator with a conflict of interest.

(6) If a party does not respond to the arbitrator's request for information, the dispute will be decided based on the available information received by the arbitrator without an opportunity for reconsideration.

(7) The submission of multiple claims to arbitration in one proceeding must be for the same provider and the same health benefit plan issuer or administrator and the total amount in controversy may not exceed \$5,000.

(h) Assistance. Assistance with submitting a request for arbitration is available on the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

§21.5022. Informal Settlement Teleconference.

A party subject to mandatory arbitration requested by an out-of-network provider or a health benefit plan issuer or administrator under this division must use best efforts to coordinate an informal settlement teleconference, as required by Insurance Code §1467.084 (concerning Availability of Mandatory Arbitration). The health benefit plan issuer or administrator must make a reasonable effort to arrange the teleconference at a date and time when the parties or representatives of the parties can participate in the informal settlement teleconference. The informal settlement teleconference must occur no later than the 30th day after arbitration is requested, unless the parties agree to extend the deadline.

§21.5023. Arbitration Participation.

Under Insurance Code §1467.101 (concerning Bad Faith), conduct that constitutes bad faith arbitration includes failing to:

(1) participate in the informal settlement teleconference under §1467.084(d) or an arbitration;

(2) provide information that the arbitrator believes is necessary to facilitate a decision; or

(3) designate a representative participating in the arbitration with full authority to enter into any agreement.

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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## DIVISION 4. COMPLAINT RESOLUTION AND OUTREACH

### 28 TAC §21.5030

STATUTORY AUTHORITY. The department proposes amendments to §21.5030 under Insurance Code §§1467.003, 1467.151, and 36.001.

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

Insurance Code §1467.151(a) provides for the Commissioner to adopt rules regulating the investigation and review of a complaint filed that relates to the settlement of an out-of-network health benefit claim that is subject to Insurance Code Chapter 1467.

Insurance Code §1467.151(b) states that the Commissioner may maintain information specified by the section, including information about a health benefit plan issuer or administrator or out-of-network provider that the Commissioner requires by rule.

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

CROSS-REFERENCE TO STATUTE. Amendments to 28 TAC §21.5030 implement Insurance Code §1467.151 and SB 1264, 86th Legislature, Regular Session (2019).

§21.5030. *Complaint Resolution.*

(a) Written complaint.

[(+) A party [An individual] may submit a written complaint on the department's website [to the department] regarding the settlement of an out-of-network health benefit claim that is subject to Insurance Code Chapter 1467. [a qualified claim or a mediation requested under §21.5010 of this title (relating to Qualified Claim Criteria): A recommended form for filing a complaint under this subsection is available online at [www.tdi.texas.gov/consumer/epmmmediation.html](http://www.tdi.texas.gov/consumer/epmmmediation.html). The complaint may be submitted by:]

[(A) mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091;]

[(B) fax to 512-490-1007;]

[(C) email to [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov); or]

[(D) online submission.]

[(2) Assistance with filing a complaint is available at the department's toll-free telephone number, 800-252-3439.]

(b) Complaint information [form]. The recommended information [form] for filing a complaint under subsection (a) of this section, includes [requests information concerning the complaint, including]:

(1) whether the complaint is within the scope of Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution);

(2) whether emergency care, health care, or a medical service have been delayed or have not been given;

(3) whether the health care, medical service, or supply, or a combination of health care, medical service, or supply, that is the subject of the complaint was for emergency care; and

(4) specific information about the qualified mediation claim or qualified arbitration claim, including:

(A) the name, type, and specialty of the [facility-based] provider [or emergency care provider];

(B) the type of service performed or supplies provided;

(C) the city and county where the service or supply was performed; and

(D) the dollar amount of the disputed claim.

(c) Department processing. The department will maintain procedures to ensure that a written complaint made through the department's website under this section is not dismissed without appropriate consideration, including:

(1) review of all of the information submitted in the written complaint;

(2) contact with the parties that are the subject of the complaint; and

(3) review of the responses received from the subjects of the complaint to determine if and what further action is required, as appropriate.]; and]

[(4) notification to the enrollee of the mediation process, as described in Insurance Code Chapter 1467, Subchapter B (concerning Mandatory Mediation).]

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

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James Person

General Counsel

Texas Department of Insurance

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



### 28 TAC §21.5031

STATUTORY AUTHORITY. The department proposes the repeal of §21.5031 under Insurance Code §§1467.003, 1467.151, and 36.001.

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

Insurance Code §1467.151(a) provides for the Commissioner to adopt rules regulating the investigation and review of a complaint filed that relates to the settlement of an out-of-network health benefit claim that is subject to Insurance Code Chapter 1467.

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

CROSS-REFERENCE TO STATUTE. The repeal of 28 TAC §21.5031 implements Insurance Code §1467.151 and SB 1264, 86th Legislature, Regular Session (2019).

*§21.5031. Department Outreach.*

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

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General Counsel

Texas Department of Insurance

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## DIVISION 5. EXPLANATION OF BENEFITS

### 28 TAC §21.5040

STATUTORY AUTHORITY. The department proposes new §21.5040 under Insurance Code §§1301.007, 1467.003, and 36.001.

Insurance Code §1301.007 states that the Commissioner may adopt rules necessary to implement Chapter 1301.

Insurance Code §1467.003 states that the Commissioner shall adopt rules as necessary to implement their respective powers and duties under Insurance Code Chapter 1467.

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

CROSS-REFERENCE TO STATUTE. The proposed new 28 TAC §21.5040 implements Insurance Code §§1271.008, 1301.010, 1551.015, 1575.009, and 1579.009; and SB 1264, 86th Legislature, Regular Session (2019).

*§21.5040. Required Explanation of Benefits.*

A health benefit plan issuer or administrator subject to Insurance Code §1271.008 (concerning Balance Billing Prohibition Notice), §1301.010 (concerning Balance Billing Prohibition Notice), §1551.015 (concerning Balance Billing Prohibition Notice), §1575.009 (concerning Balance Billing Prohibition Notice), or §1579.009 (concerning Balance Billing Prohibition Notice) must provide written notice in accordance with this section in an explanation of benefits in connection with a health care or medical service or supply provided by a non-network provider or an out-of-network provider:

(1) To the enrollee and physician or provider, which must include:

(A) a statement of the billing prohibition, as applicable; and

(B) the total amount the physician or provider may bill the enrollee under the health benefit plan and an itemization of copay-

ments, coinsurance, deductibles, and other amounts included in that total;

(2) To the physician or provider, a conspicuous statement in not less than 10-point boldface type that is substantially similar to the following: "If you disagree with the payment amount, you can request mediation or arbitration. To learn more and submit a request, go to [www.tdi.texas.gov](http://www.tdi.texas.gov). After you submit a complete request, you must notify [HEALTH BENEFIT PLAN ISSUER OR ADMINISTRATOR NAME] at [EMAIL]."

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) 657-6584



## DIVISION 6. BENCHMARKING

### 28 TAC §21.5050

STATUTORY AUTHORITY. The department proposes new §21.5050 under Insurance Code §§1467.003, 1467.006, 1467.151, and 36.001.

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

Insurance Code §1467.006 states that the Commissioner may adopt rules governing the submission of information for the benchmarking database.

Insurance Code §1467.151(b) states that the Commissioner may maintain information specified by the section, including information about a health benefit plan issuer or administrator or out-of-network provider that the Commissioner requires by rule.

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

CROSS-REFERENCE TO STATUTE. The proposed new 28 TAC §21.5050 implements Insurance Code §1467.006 and SB 1264, 86th Legislature, Regular Session (2019).

*§21.5050. Submission of Information.*

(a) Required submission. A health benefit plan issuer or administrator must submit information to the benchmarking database organization selected by the Commissioner as required by this section.

(b) Information required. For each geozip in Texas, a health benefit plan issuer or administrator must submit information necessary for the benchmarking database organization to calculate a health care or medical service or supply, as determined by the benchmarking database organization, including:

(1) the 80th percentile of billed charges of all physicians or health care providers who are not facilities; and

(2) the 50th percentile of rates paid to participating providers who are not facilities.

(c) Submission frequency. A health benefit plan issuer or administrator must submit 2019 plan year data by February 1, 2020, to the benchmarking database organization. After February 1, 2020, health benefit plan issuers must submit data monthly to the benchmarking database organization, or as required by the selected benchmarking organization.

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

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## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§115.10, 115.111, 115.112, 115.119, and 115.421.

If adopted, the amended sections of Chapter 115 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

#### Background and Summary of the Factual Basis for the Proposed Rules

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for ozone nonattainment areas with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 parts per million with a July 20, 2018, attainment date. Based on 2017 monitoring data, the DFW area did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with the FCAA, §181(a)(5). On August 7, 2019, the EPA signed the final notice reclassifying the DFW and Houston-Galveston-Brazoria (HGB) areas as serious ozone nonattainment areas.

With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the volatile organic compounds (VOC) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and

§182(b)(2). Although the eight-county HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, the commission determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking that affect the HGB area.

The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements: Final Rule*, published in the *Federal Register* on March 6, 2015 (80 FR 12264), specifies an attainment date of July 20, 2021 for serious nonattainment areas. FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in Control Techniques Guideline (CTG) and all non-CTG major sources of VOC, including emission sources covered in an Alternative Control Technology (ACT) document. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979).

Depending on the classification of an area designated nonattainment for a NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold for those nine counties remains at the level required for serious nonattainment areas, which is the potential to emit (PTE) of 50 tons per year (tpy) of VOC. Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008 standard, which is the PTE of 100 tpy of VOC. With the reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is the PTE of 50 tpy of VOC emissions. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County.

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to implement VOC RACT for major source fixed roof oil and condensate storage tanks in Wise County. A previous DFW VOC RACT rulemaking (Rule Project Number 2013-048-115-AI, 40 TexReg 3907, June 19, 2015) addressed CTG RACT for this source category. The proposed revisions would address major source storage tanks in Wise County by requiring fixed roof oil and condensate tanks with at least 50 tpy of uncontrolled VOC emissions from flashed gasses to operate a control device achieving at least 95% efficiency. In addition, these newly affected storage tanks would be required to comply with associated inspection, repair, testing, and recordkeeping requirements. RACT requirements must be complied with by no later than the attainment

date for the DFW serious nonattainment area, July 20, 2021. The proposed amendments ensure that FCAA VOC RACT is in place for the DFW area. The commission invites comment on the technological and economic feasibility of the RACT rule revisions proposed in this division.

The commission is not proposing amendments to implement RACT for other emission source categories based on a determination, after analyzing the point source emissions inventory, Title V permits, new source review permits, and central registry databases, that there would be no other affected sources that would meet the rule applicability or that would be affected by the rule requirements. As part of this rulemaking, the commission is proposing technical revisions intended to correct inadvertent errors in Chapter 115, Subchapter E, Division 2, Surface Coating Processes, made during a previous RACT rulemaking (Rule Project Number 2013-048-115-AI), to ensure consistency with the agency's intent. The proposed technical corrections to §115.421 will correct the language used in the emission specifications tables for surface coating processes. Non-substantive revisions are also proposed as part of this rulemaking that would remove obsolete language. The commission has determined that the proposed revisions would not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

#### Section by Section Discussion

Although the purpose of this rulemaking is to implement RACT for the DFW 2008 eight-hour ozone nonattainment area, the commission is also proposing to revise portions of the rules to make technical corrections to surface coating emission specifications for. These technical corrections are intended to clarify the rules to be consistent with the agency's original intent. The specific changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. The commission is requesting comment on any instance in which the proposed technical corrections would not achieve the commission's intended original intent of the rule.

#### *Subchapter A, Definitions*

##### *§115.10, Definitions*

The proposed rulemaking would amend §115.10(10) to remove obsolete language concerning Wise County's inclusion in the list of attainment counties. The language indicating that, beginning January 1, 2017, Wise County would no longer be considered a covered attainment county is no longer necessary since that date has passed and Wise County is included in the definition for the DFW area in §115.10(11). The commission also proposes removing from the §115.10(10) definition the language concerning Wise County's nonattainment designation for the 2008 eight-hour ozone NAAQS no longer being legally effective upon the commission publishing notice in the *Texas Register* and Wise County, therefore, continuing to be defined as an attainment county. The litigation over the Wise County attainment status has been completed, and the commission proposes to remove this language since the commission cannot publish such a notice until Wise County is redesignated to attainment by the EPA. The removal of this language will allow for greater clarity in the definitions and remove any doubt concerning the nonattainment status of Wise County.

The proposed rulemaking would amend §115.10(11)(C) to remove obsolete language concerning the removal of Wise County from the definition of the DFW area. Wise County is a part of the DFW area and is included in the definition of the area along with Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. The commission seeks to remove language in paragraph (11)(C) that states that Wise County is no longer included in the definition of the DFW area upon publication in the *Texas Register* by the commission that the nonattainment designation for the 2008 eight-hour ozone NAAQS for Wise County is no longer legally effective. As with the language in paragraph (10), the litigation over the Wise County attainment status has been completed, and the commission proposes to remove this language since the commission cannot publish such a notice until Wise County is redesignated to attainment by the EPA.

#### *Subchapter B, General Volatile Organic Compound Sources*

##### *Division 1, Storage of Volatile Organic Compounds*

The proposed rulemaking would amend Chapter 115, Subchapter B, Division 1, to implement RACT requirements for the DFW area under the 2008 eight-hour ozone NAAQS. These proposed amendments would lower the major source threshold for Wise County to 50 tpy of uncontrolled flash emissions for fixed roof oil and condensate storage tanks to be consistent with the major source threshold for a serious nonattainment area. The other counties in the DFW area are currently subject to a 50 tpy major source threshold due to a serious nonattainment classification under the 1997 eight-hour ozone NAAQS. The proposed rulemaking would update exemptions, control requirements, and compliance schedules in this division as well as make any necessary edits and corrections to outdated or incorrect language. Although no changes are proposed for the inspection and repair requirements in §115.114, the requirements in subsection (a)(5) reference the flash gas provisions in §115.112(e) and would apply to the storage tanks newly affected by this proposed rulemaking.

##### *§115.111, Exemptions*

The commission proposes to amend the exemptions under §115.111(a)(12) to change the condensate throughput limit required for an exemption for a storage tank or tank battery in Wise County storing condensate prior to custody transfer. The throughput limit required for an exemption would be lowered from 6,000 barrels (252,000 gallons) to 3,000 barrels (126,000 gallons) of condensate throughput per year on a rolling 12-month basis beginning July 20, 2021, the date specified in §115.119(f) of the compliance schedule. The proposed amendment to this rule states that, on or after July 20, 2021, the owner or operator of a storage tank or tank battery that exceeds the new 3,000-barrel throughput limit may be exempt from the requirements in §115.112(e)(4)(C). This exemption may be granted only if the owner or operator demonstrates, using the test methods found in §115.117, that the uncontrolled VOC emissions are less than 50 tpy on a rolling 12-month basis. The amendment to this exemption is needed to reflect the new major source threshold for VOC emissions that is required to implement RACT in Wise County. This new limit would ensure that RACT is in place for storage tanks storing condensate in Wise County consistent with the RACT requirements for the other nine DFW area counties covered under the exemption in subsection (a)(10).

##### *§115.112, Control Requirements*

The commission proposes to amend the control requirements under §115.112(e)(4)(C) and (5)(C). This amendment is needed to update the control requirements for VOC storage tanks to implement RACT in Wise County as part of the DFW serious ozone nonattainment area. The other nine counties in the DFW area are currently subject to major source RACT requirements due to a previous serious nonattainment classification under the 1997 eight-hour ozone NAAQS. This proposed amendment establishes a new, lower major source threshold for fixed roof oil and condensate VOC storage tanks in Wise County and ensure RACT is in place as required under FCAA, §182(b).

The proposed amendment to §115.112(e)(4)(C) creates clauses (i) and (ii). The proposed new clauses would accommodate the transition from the current threshold of 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis to the proposed new threshold of 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis on July 20, 2021. The proposed addition of §115.112(e)(4)(C)(i) maintains the current standard for fixed roof tanks storing condensate and requires that flashed gases be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds 6,000 barrels per year on a rolling 12-month basis. This proposed new clause applies only until the proposed July 20, 2021 compliance deadline, which is found under §115.119(f) in the compliance schedules and is the deadline for the RACT requirements proposed in this rulemaking. Accordingly, the proposed addition of §115.112(e)(4)(C)(ii) sets the new standard for fixed roof tanks storing condensate and requires that flashed gases be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds 3,000 barrels per year on a rolling 12-month basis. This proposed new clause applies beginning on the date specified in §115.119(f), or July 20, 2021, and would ensure RACT is in place for major sources in Wise County. The commission is using 6,000 barrels and 3,000 barrels per year thresholds because this equates to 100 tons and 50 tons of VOC emissions per year using the 33.3 pound per barrel emission factor.

The proposed amendment to §115.112(e)(5)(C) creates clauses (i) and (ii). The proposed new clauses would accommodate the transition from the current threshold of 100 tpy condensate throughput per year on a rolling 12-month basis to the proposed new threshold of 50 tpy condensate on a rolling 12-month basis on July 20, 2021. Specifically, proposed §115.112(e)(5)(C)(i) indicates that, for a fixed roof storage tank storing oil or condensate, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, from the aggregate of storage tanks in a tank battery, or from the aggregate of the storage tanks at a pipeline breakout station equal or exceed 100 tpy on a rolling 12-month basis. This proposed new clause applies only until the July 20, 2021 compliance deadline, which is found in the compliance schedules under proposed, revised §115.119(f) and is the deadline for the RACT requirements proposed in this rulemaking. Proposed §115.112(e)(5)(C)(ii) indicates that, for a fixed roof storage tank storing oil or condensate, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, from the aggregate of storage tanks in a tank battery, or from the aggregate of the storage tanks at a pipeline breakout station equal or exceed 50 tpy. This proposed new clause applies beginning on the date specified in proposed §115.119(f), or July 20, 2021, and would ensure RACT is in place for major sources in Wise County.

### *§115.119, Compliance Schedules*

The commission proposes to amend the compliance schedules found in existing §115.119(f) for Wise County. This proposed amendment would specify that in Wise County, the owner or operator of each VOC storage tank was required to be in compliance with the division by January 1, 2017, which was the compliance date associated with the previous RACT rulemaking (Rule Project Number 2013-048-115-AI). Proposed subsection (f) would further specify that owners or operators shall comply with the updated exemption in proposed §115.111(a) and updated control requirements in proposed §115.112(e)(4)(C)(ii) and (5)(C)(ii) no later than July 20, 2021, which is the attainment date for the DFW serious nonattainment area.

### *Subchapter E, Solvent-Using Processes*

#### *Division 2, Surface Coating Processes*

##### *§115.421, Emission Specifications*

The commission proposes to amend the table in §115.421(8)(A), to add the phrase "Minus Water and Exempt Solvent" to the "Coating Type" column heading, making this concept applicable to each of the surface coating types listed for regulation. The commission also proposes to amend the table in §115.421(8)(A) to correct an inadvertent error made to the emission limits applicable to the surface coating of miscellaneous metal parts and products during the Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). As a result of that rulemaking, the contents of §115.421 were significantly reformatted to improve readability and enhance the clarity of that rule. Part of the reformat was transferring the four miscellaneous metal parts and products surface coating emission limits from a list to a table. The accompanying preamble discussion indicated that only changes to formatting would be made and that no substantive changes to the requirements for this coating category were intended to be made. Prior to this adopted format change, determining compliance with the coating emission limits was on a pounds of VOC per gallon of coating, minus water and exempt solvent, basis. The proposed change will add the text "Minus Water and Exempt Solvent" to ensure the intent of this rule requirement is upheld. The existing miscellaneous metal parts and products emission specifications apply to affected surface coaters in the Beaumont-Port Arthur area, El Paso area, and Gregg, Nueces, and Victoria Counties, and in limited situations in the DFW and HGB areas. Most miscellaneous metal parts and products surface coaters in the DFW and HGB areas affected by the Chapter 115 rules are subject to the rules in Chapter 115, Subchapter E, Division 5. Because this change is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

The commission proposes amendments to the table in §115.421(12), to remove the phrase "Minus Water and Exempt Solvent" from the heading of the "Coating Type" column and place it beside each of the coating types listed, except for the wipe-down solutions category. Similar to the miscellaneous metal parts and products surface coating requirements, the commission proposes to amend the table in §115.421(12) to correct an inadvertent error made to the vehicle refinishing wipe-down solution emission specification made during the Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). Part of the reformat was transferring all the vehicle refinishing surface coating emission limits from a list to a table. The accompanying preamble discussion indicated that only changes to formatting would be made and that no substan-

tive changes to the requirements for this coating category were intended to be made. Prior to this adopted format change, determining compliance with the wipe-down solution emission limit was on a pound of VOC per gallon of solution basis, evidenced by the omission of "excluding water and exempt solvent." While all the other surface coating types regulated under the vehicle refinishing category are calculated without the inclusion of water and exempt solvent, wipe-down solutions should be calculated with water and exempt solvent included. However, the table currently requires compliance on a pound of VOC per gallon of solution basis, excluding water and exempt solvent. The proposed change will add the text "including water and exempt solvent" to ensure the intent of this particular rule requirement is upheld. The existing vehicle refinishing emission specifications apply to affected surface coaters in the HGB and El Paso areas in addition to the DFW area. Because this change is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

The rulemaking is proposed in order to comply with the FCAA and ensure that requirements relating to VOC RACT are in place for Wise County. The proposed rulemaking would revise the Texas Administrative Code to implement RACT for major sources and lower the applicability threshold to 50 tpy of uncontrolled VOC emissions triggering flashed gas control requirements and associated inspection, repair, testing, and recordkeeping requirements for fixed roof oil and condensate storage tanks in the county.

#### Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be in compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of VOC emission standards for Wise County and the DFW ozone nonattainment area.

The proposed rulemaking may result in fiscal implications for a limited number of businesses or individuals. Owners or operators of fixed roof oil and condensate storage tanks with uncontrolled VOC flash emissions of at least 50 tpy in Wise County will have to comply with the proposed rules. Those that are affected will be required to control flash emissions using a vapor control device achieving at least a 95% control efficiency. Associated inspection, repair, testing, and recordkeeping requirements will also apply to owners or operators of these storage tanks. The agency estimates this will affect 20 tank batteries in Wise County; however, fifteen of those are known to already have control devices installed.

If a person is required to install a vapor recovery unit at an affected site, the estimated cost in the first year is between \$60,000 and \$110,000. The recovered condensate is expected to offset some of the cost. Recovered condensate at 50 tpy in the Wise County area would be 339 barrels saved through recovery. The West Texas Intermediate Crude oil price was valued at \$48.50 on March 13, 2019, making the value of the recovered condensate \$19,351 per year. For this reason, a person should expect

to recover their costs from the original purchase within the first six years.

Other costs may include the installation of a totalizing flow meter at \$3,000 and the use of flares that meet the design standards listed in 40 Code of Federal Regulations (CFR) §60.18(b) - (f), to control VOC emissions from tanks. If the flare is not already subject to these requirements, the cost of a temperature monitor would range from \$500 to \$1,000. A design verification to meet 40 CFR §60.18, would cost approximately \$3,000. In most cases, a flare or vapor recovery unit is assumed for each controlled tank battery, not both, and owners and operators are expected to choose the most economical option. However, owners who install a vapor recovery unit may opt to also include a flare to control emissions when the vapor recovery unit is offline.

A person may experience expenses relating to inspection, maintenance, repair, and recordkeeping. Assuming the maximum number of required inspections, one per day, the total cost could be up to \$5,559 per year. The low end of crude oil or condensate production requiring inspection would likewise yield inspection costs of \$442 per year. Annual maintenance costs are estimated at \$487 per tank battery, and repair costs are estimated at \$161 per year per tank battery. An additional \$100 per year may be required to keep records generated at each tank battery.

The probable economic cost (and savings) to owners or operators of fixed roof oil and condensate storage tanks with uncontrolled VOC flash emissions of at least 50 tons per year in Wise County for the first five years after implementation of the rule is as follows: Year 1: \$98,697; Year 2: \$15,602; Year 3: \$15,602; Year 4: \$15,602; and Year 5: \$15,602.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current

employee positions, or require an increase or decrease in fees paid to the agency. As required by federal law, the proposed rulemaking does expand an existing regulation and increase the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact, positively or negatively, the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the amendments in light of the Regulatory Impact Analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a major environmental rule as defined in that statute, and in addition, if they did meet the definition, would not be subject to the requirement to prepare an RIA.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to revise Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements in the DFW 2008 eight-hour ozone nonattainment area. These proposed requirements would lower the major source threshold for Wise County to 50 tpy of uncontrolled flash emissions for fixed roof oil and condensate storage tanks to be consistent with the major source threshold for a serious nonattainment area. Generally, the commission expects the proposed requirements to place minimal burden on affected owners and operators and that the proposed compliance date provides an adequate amount of time for these owners and operators to make all necessary installations and adjustments for compliance purposes.

The commission also proposes changes to two tables in Chapter 115, Subchapter E, Division 2, to correct inadvertent errors made to the emission limits applicable to the surface coating of miscellaneous metal parts and products and to vehicle refinishing wipe-down solution emission specifications. These errors were made during the Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). During that rulemaking, the contents of these tables were significantly reformatted to improve readability and enhance the clarity of the rule. The accompanying preamble discussion indicated that only changes to formatting were being made and that no substantive changes to the requirements for these categories were intended to be made. The proposed changes will ensure the intent of the rule requirement is upheld. These emission specifications apply to affected surface coaters in the Beaumont-Port Arthur area, El Paso area, and Gregg, Nueces, and Victoria Counties and in limited situations in the DFW and HGB areas. Because this change is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

As discussed in the Fiscal Note section of this preamble, the proposed rulemaking is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, this rulemaking does not meet any of the four applicability criteria for requiring an RIA for a major environmental rule, which are listed in Texas Government Code,

§2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking will update RACT requirements for crude oil and condensate storage tanks in the DFW area and correct errors in two tables for requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables.

The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for nonattainment areas with a classification of moderate or higher. The DFW 2008 eight-hour ozone moderate nonattainment area failed to attain the 2008 standard by the July 20, 2018 attainment date for moderate areas and did not qualify for a one-year attainment date extension in accordance with the FCAA, §181(a)(5). On August 7, 2019, the EPA signed the final reclassification notice. With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the VOC RACT requirements mandated by FCAA, §172(c)(1) and §182(b)(2). This includes a SIP revision that implements RACT for all emission sources addressed in a CTG and all non-CTG major sources of VOC, including emission sources covered in an ACT document.

Depending on the classification of an area designated nonattainment for an ozone NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold level for sources in an area to prevent backsliding (80 FR 12264). For these reasons, the nine DFW area counties that were designated nonattainment under the 1997 eight-hour ozone NAAQS and classified as serious (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) retain the major source emission threshold of a PTE of 50 tpy of VOC. Wise County, which was first designated nonattainment under the 2008 eight-hour ozone NAAQS, is currently subject to a major source threshold for moderate nonattainment areas, or a PTE of 100 tpy of VOC. With the reclassification of the 10-county DFW 2008 eight-hour ozone NAAQS nonattainment area from moderate to serious, the major source emission threshold for Wise County lowers to the PTE of 50 tpy of VOC. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County.

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, to implement VOC RACT for major source fixed roof oil and condensate storage tanks in Wise County. A previous DFW VOC RACT rulemaking (Rule Project Number 2013-048-115-AI) addressed CTG RACT for this source category. The proposed rulemaking would address major source storage tanks in Wise County by requiring fixed roof oil and condensate tanks with at least 50 tpy of uncontrolled VOC emissions from flashed gasses to operate a control device achieving at least 95% efficiency. In addition, these newly affected storage tanks would be required to comply with associated inspection, repair, testing, and recordkeeping requirements. Compliance with RACT requirements must be achieved by no later than July 20, 2021. The proposed rule amendments ensure that



the FCAA mandates for VOC RACT are in place for all counties in the DFW eight-hour ozone nonattainment area for the 2008 eight-hour ozone NAAQS.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410, generally does not require specific programs, methods, or reductions in order to meet the standards, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as, schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The proposed rulemaking would revise rules in Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area and correct previous errors in two tables for requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct an RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633, concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rulemaking from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts rulemaking to revise the SIP. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental

rule that exceeds federal law, then every rulemaking to revise the SIP would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rulemaking that is extraordinary in nature. While the rulemaking included in the SIP will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rulemaking proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rulemaking since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rulemaking challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area and correct previous errors in two tables for requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "Major environmental rule"; it also does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the Draft RIA determination during the public comment period.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code,

Chapter 2007, is applicable. For nonattainment areas classified as moderate and above, FCAA, §172(c)(1) and §182(b)(2), requires the state to submit a SIP revision that implements RACT for all major stationary sources of VOC. The specific purpose of the proposed rulemaking is to revise rules in Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area based on a serious classification. The proposed rulemaking will also correct errors made in a previous rulemaking to two tables in Chapter 115, Subchapter E, Division 2. This proposed rulemaking will clarify requirements for specific surface coating types and wipe-down solution types listed for regulation. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because this is an action that is taken in response to a real and substantial threat to public health and safety; is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rulemaking fulfills the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas that may contribute to the timely attainment of the ozone standard and reduced public exposure to VOC. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Because of this, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements for each emission unit affected by the revisions to Chapter 115 at their site.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Houston on October 14, 2019, at 2:00 p.m. in the auditorium of the Texas Department of Transportation located at 7600 Washington Avenue; and in Arlington on October 17, 2019 at 2:00 p.m. in the Arlington City Council Chambers located at 101 Abram Street. The hearings are 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-075-115-AI. The comment period closes on October 28, 2019. Copies of the proposed rulemaking may be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Graham Bates, Air Quality Planning Section, (512) 239-2606.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §§115.10

#### Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under the Federal Clean Air Act (FCAA),

42 United States Code (USC), §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

§115.10. *Definitions.*

Unless specifically defined in Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) **Background**--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) **Beaumont-Port Arthur area**--Hardin, Jefferson, and Orange Counties.

(3) **Capture efficiency**--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) **Carbon adsorption system**--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) **Closed-vent system**--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) **Coaxial system**--A type of system consisting of a tube within a tube that requires only one tank opening. The tank opening allows fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes.

(7) **Component**--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(8) **Connector**--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(9) **Continuous monitoring**--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(10) **Covered attainment counties**--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee,

Colorado, Comal, Cooke, Coryell, ~~DeWitt, [De Witt,] Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, [Wise,] and Wood Counties. [Beginning January 1, 2017 this paragraph no longer applies to Wise County. Upon the date the commission publishes notice in the Texas Register that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, Wise County is included under this definition of covered attainment counties as it was prior to January 1, 2017.]~~

(11) **Dallas-Fort Worth area**--As follows:

(A) Collin, Dallas, Denton, and Tarrant Counties for:

(i) Subchapter B, Division 5 of this chapter (relating to Municipal Solid Waste Landfills);

(ii) Subchapter F, Division 3 of this chapter (relating to Degassing of Storage Tanks, Transport Vessels, and Marine Vessels);

(iii) Subchapter F, Division 4 of this chapter (relating to Petroleum Dry Cleaning Systems);

(B) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties for:

(i) Subchapter B, Division 4 of this chapter (relating to Industrial Wastewater);

(ii) Subchapter D, Division 1 of this chapter (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries);

(iii) Subchapter E, Division 3 of this chapter (relating to Flexographic and Rotogravure Printing);

(iv) Subchapter F, Division 2 of this chapter (relating to Pharmaceutical Manufacturing Facilities); and

(C) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties for all other divisions of this chapter. ~~[Upon the date the commission publishes notice in the Texas Register that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, Wise County is no longer included in this definition of the Dallas-Fort Worth area.]~~

(12) **Dual-point vapor balance system**--A type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for vapor connection.

(13) **El Paso area**--El Paso County.

(14) **Emergency flare**--A flare that only receives emissions during an upset event.

(15) **External floating roof**--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(16) Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(17) Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(18) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(19) Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(20) Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(21) Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOC): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOC: ethylene and propylene.

(22) Houston-Galveston or Houston-Galveston-Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(23) Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(24) Internal floating cover or internal floating roof--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) is considered to be an internal floating roof storage tank.

(25) Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterfly covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(26) Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute

(0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(27) Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(28) Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(29) Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(30) Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(31) Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(32) Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(33) Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems.

(34) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(35) Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(36) Pressure relief valve or pressure-vacuum relief valve--A safety device used to prevent operating pressures from exceeding the maximum and minimum allowable working pressure of the process equipment. A pressure relief valve or pressure-vacuum relief valve is automatically actuated by the static pressure upstream of the valve but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(37) Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(38) Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(39) Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(40) Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(41) Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(42) Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(43) Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(44) Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(45) Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(46) Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(47) True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(48) Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(49) Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(50) Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(51) Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

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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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



## SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

### DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

#### 30 TAC §§115.111, 115.112, 115.119

##### Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

§115.111. *Exemptions.*

(a) The following exemptions apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur or El Paso areas is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

- (A) a mechanical shoe seal;
- (B) a liquid-mounted foam seal; or
- (C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

- (A) a mechanical shoe seal;
- (B) a liquid-mounted foam seal; or
- (C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per

year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title (relating to Compliance Schedules) that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after the date specified in §115.119(b)(1)(C) of this title, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis. On or after July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

- (A) a mechanical shoe seal;
- (B) a liquid-mounted foam seal; or
- (C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

- (A) a mechanical shoe seal;
- (B) a liquid-mounted foam seal; or
- (C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

#### §115.112. Control Requirements.

(a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) of this paragraph for VOC other than crude oil and condensate or Table II(a) of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(a)(1) (No change)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(b) The following requirements apply in Gregg, Nueces, and Victoria Counties.

(1) No person shall place, store, or hold in any storage tank any VOC, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(b) of this paragraph for VOC other than crude oil and condensate.

Figure: 30 TAC §115.112(c)(1) (No change)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must be vapor-tight except when gauging and sampling is taking place.

(3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is equipped with one of the following control devices, properly maintained and operated:

(A) an internal floating roof or external floating roof, as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor control system as defined in §115.10 of this title.

(d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any VOC unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof as defined in §115.10 of this title except for automatic bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(C) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(H) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof may be supported by the leg supports or other support devices, such as hangers from the fixed roof, during the initial fill or refill after the storage tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for maintenance or inspection;

(ii) when necessary for supporting a change in service to an incompatible liquid;



(iii) when the storage tank has a storage capacity less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the floating roof is landed until the floating roof is within ten percent by volume of being reloaded;

(v) when all VOC emissions from the tank, including emissions from roof landings, have been included in a floating roof storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(vi) when all VOC emissions from floating roof landings at the regulated entity, as defined in §101.1 of this title (relating to Definitions), are less than 25 tons per year.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.

(4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (B) or (C) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

(B) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(C) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(D) Other test methods or computer simulations may be allowed if approved by the executive director.

(e) The control requirements in this subsection apply in the Houston-Galveston-Brazoria and Dallas-Fort Worth areas beginning March 1, 2013, except as specified in §115.119 of this title (relating to Compliance Schedules) and in paragraph (3) of this subsection.

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table 1 of this paragraph for VOC other than crude oil and condensate or Table 2 of this paragraph for crude oil and condensate.  
Figure: 30 TAC §115.112(e)(1)(No change)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(B) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(I) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as allowed under the following circumstances:

(i) during the initial fill or refill after the storage tank has been cleaned;

(ii) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a

secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(iii) when necessary for supporting a change in service to an incompatible liquid;

(iv) when the storage tank has a storage capacity less than 25,000 gallons;

(v) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;

(vi) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or

(vii) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.

(3) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain the following minimum control efficiency:

(i) 90% in the Houston-Galveston-Brazoria area until the date specified in clause (ii) of this subparagraph;

(ii) 95% in the Houston-Galveston-Brazoria area beginning July 20, 2018; and

(iii) 95% in the Dallas-Fort Worth area.

(B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) For a fixed roof storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds:

(A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area except Wise County:

(i) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; and

(C) in Wise County: [ ~~6,000 barrels (252,000 gallons) per year on a rolling 12-month basis.~~]

(i) 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis, until the date specified in clause (ii) of this subparagraph; and

(ii) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title.

(5) For a fixed roof storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station, equal or exceed:

(A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area, except Wise County:

(i) 50 tons per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and

(C) in Wise County: [ ~~400 tons per year on a rolling 12-month basis.~~]

(i) 100 tons per year on a rolling 12-month basis, until the date specified in clause (ii) of this subparagraph; and

(ii) 50 tons per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title.

(6) Uncontrolled emissions from a fixed roof storage tank or fixed roof storage tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must be estimated by one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (C) or (D) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(7) Fixed roof storage tanks in the Dallas-Fort Worth area and Houston-Galveston-Brazoria area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the fixed roof storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufac-

urer's instructions, and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.

(B) Each closure device must be properly sealed to minimize vapor loss when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

#### §115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1), (2), (3)(A), and (4); 115.117; and 115.118(a) of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e)(1) - (6) of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator shall comply with §§115.112(e)(1) - (6), 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) as soon as practicable, but no later than March 1, 2013. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the owner or operator of a storage tank subject to §115.112(e)(3)(A)(i) of

this title shall continue to comply with §115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of §115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to §115.112(e)(3)(A)(ii) of this title.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(C) As soon as practicable but no later than 15 months after the commission publishes notice in the *Texas Register* that the Dallas-Fort Worth area, except Wise County, has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard the owner or operator of a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station is required to be in compliance with the control requirements in §115.112(e)(4)(B)(ii) and (5)(B)(ii) of this title except as specified in §115.111(a)(11) of this title (relating to Exemptions).

(2) The owner or operator is no longer required to comply with §115.112(a) of this title beginning March 1, 2013.

(3) The affected owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title as soon as practicable, but no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §§115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(e) In Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance [shall comply] with this division by [as soon as practicable, but no later than] January 1, 2017, and shall continue to comply with this division, except that compliance with §§115.111(a)(12), (e)(4)(C)(ii) and (5)(C)(ii) of this title is required as soon as practicable, but no later than July 20, 2021.

(g) The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

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) 239-2678



## SUBCHAPTER E. SOLVENT-USING PROCESSES

### DIVISION 2. SURFACE COATING PROCESSES

#### 30 TAC §115.421

##### Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose

to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

##### §115.421. Emission Specifications.

The owner or operator of the surface coating processes specified in §115.420(a) of this title (relating to Applicability and Definitions) shall not cause, suffer, allow, or permit volatile organic compound (VOC) emissions to exceed the specified emission limits in paragraphs (1) - (16) of this subsection. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) of this subsection which are based on paneling surface area, and those in paragraph (15) of this subsection which, if using an averaging approach, must use one of the daily averaging equations within that paragraph. The owner or operator of a surface coating operation subject to paragraph (10) of the subsection may choose to comply by using the monthly weighted average option as defined in §115.420(c)(1)(YY) of this title.

(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) must not exceed 2.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.34 kilogram/liter (kg/liter)).

(2) Metal furniture coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) must not exceed 3.0 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.36 kg/liter).

(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils must not exceed 2.6 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.31 kg/liter).

(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) must not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).

(5) Fabric coating. VOC emissions from the coating of fabric must not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).

(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets must not exceed 3.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application

system (0.45 kg/liter). Plastisol coatings should not be included in calculations.

(7) Can coating. The following VOC emission limits must be achieved, on the basis of VOC solvent content per unit of volume of coating (minus water and exempt solvent) delivered to the application system:

Figure: 30 TAC §115.421(7) (No change.)

(8) Miscellaneous metal parts and products (MMPP) coating.

(A) VOC emissions from the coating of MMPP must not exceed the following limits for each surface coating type:

Figure: 30 TAC §115.421(8)(A)

[Figure: 30 TAC §115.421(8)(A)]

(B) If more than one emission limitation in subparagraph (A) of this paragraph applies to a specific coating, then the least stringent emission limitation applies.

(C) All VOC emissions from non-exempt solvent washings must be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(9) Factory surface coating of flat wood paneling. The following emission limits apply to each product category of factory-finished paneling (regardless of the number of coats applied):

Figure: 30 TAC §115.421(9) (No change.)

(10) Aerospace coatings. The VOC content of coatings, including any VOC-containing materials added to the original coating supplied by the manufacturer, that are applied to aerospace vehicles or components must not exceed the following limits (in grams of VOC per liter of coating, less water and exempt solvent). The following applications are exempt from the VOC content limits of this paragraph: manufacturing or re-work of space vehicles or antique aerospace vehicles or components of each; touchup; United States Department of Defense classified coatings; and separate coating formulations in volumes less than 50 gallons per year to a maximum of 200 gallons per year for all such formulations at an account.

(A) For the broad categories of primers, topcoats, and chemical milling maskants (Type I/II) which are not specialty coatings as listed in subparagraph (B) of this paragraph:

(i) primer, 350;

(ii) topcoats (including self-priming topcoats), 420;

and

(iii) chemical milling maskants:

(I) Type I, 622; and

(II) Type II, 160.

(B) For specialty coatings:

Figure: 30 TAC §115.421(10)(B) (No change.)

(11) Automobile and light-duty truck manufacturing coating. The following VOC emission limits must be achieved, on the basis of solvent content per unit volume of coating (minus water and exempt solvents) delivered to the application system or for primer surfacer and top coat application, compliance may be demonstrated on the basis of VOC emissions per unit volume of solids deposited as determined by §115.425(3) of this title (relating to Testing Requirements).

Figure: 30 TAC §115.421(11) (No change.)

(12) Vehicle refinishing coating (body shops). VOC emissions from coatings or solvents must not exceed the following limits,

as delivered to the application system. Additional control requirements for vehicle refinishing (body shops) are referenced in §115.422 of this title (relating to Control Requirements).

Figure: 30 TAC §115.421(12)

[Figure: 30 TAC §115.421(12)]

(13) Surface coating of mirror backing.

(A) VOC emissions from the coating of mirror backing must not exceed the following limits for each surface coating application method:

(i) 4.2 pounds per gallon (0.50 kg/liter) of coating (minus water and exempt solvent) delivered to a curtain coating application system; and

(ii) 3.6 pounds per gallon (0.43 kg/liter) of coating (minus water and exempt solvent) delivered to a roll coating application system.

(B) All VOC emissions from solvent washings must be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(14) Surface coating of wood parts and products. VOC emissions from the coating of wood parts and products must not exceed the following limits, as delivered to the application system, for each surface coating type. All VOC emissions from solvent washings must be included in determination of compliance with the emission limitations in this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

Figure: 30 TAC §115.421(14) (No change.)

(15) Surface coating at wood furniture manufacturing facilities. For facilities which are subject to this paragraph, adhesives are not considered to be coatings or finishing materials.

(A) VOC emissions from finishing operations must be limited by:

(i) using topcoats with a VOC content no greater than 0.8 kilogram of VOC per kilogram of solids (0.8 pound of VOC per pound of solids), as delivered to the application system; or

(ii) using a finishing system of sealers with a VOC content no greater than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and topcoats with a VOC content no greater than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iii) for wood furniture manufacturing facilities using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats, using sealers and topcoats that meet the following criteria:

(I) if the wood furniture manufacturing facility uses acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the sealer must contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(II) if the wood furniture manufacturing facility uses a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the sealer must contain no more than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0

pounds of VOC per pound of solids), as delivered to the application system; or

(III) if the wood furniture manufacturing facility uses an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer must contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iv) using an averaging approach and demonstrating that actual daily emissions from the wood furniture manufacturing facility are less than or equal to the lower of the actual versus allowable emissions using one of the following inequalities:  
Figure: 30 TAC §115.421(15)(A)(iv) (No change.)

(v) using a vapor control system that will achieve an equivalent reduction in emissions as the requirements of clauses (i) or (ii) of this subparagraph. If this option is used, the requirements of §115.423(3) of this title do not apply; or

(vi) using a combination of the methods presented in clauses (i) - (v) of this subparagraph.

(B) Strippable booth coatings used in cleaning operations must not contain more than 0.8 kilogram of VOC per kilogram of solids (0.8 pound of VOC per pound of solids), as delivered to the application system.

(16) Marine coatings.

(A) The following VOC emission limits apply to the surface coating of ships and offshore oil or gas drilling platforms at shipbuilding and ship repair operations, and are based upon the VOC content of the coatings as delivered to the application system.  
Figure: 30 TAC §115.421(16)(A) (No change.)

(B) For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall determine the VOC content as follows.

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the shipbuilding and ship repair operation complies with the cold-weather limits in addition to the other limits specified in subparagraph (A) of this paragraph) for each batch as follows.  
Figure: 30 TAC §115.421(16)(B)(i) (No change.)

(ii) If the volume fraction of solids in the batch as supplied  $V_s$  is not supplied directly by the coating manufacturer, the owner or operator shall determine  $V_s$  as follows.  
Figure: 30 TAC §115.421(16)(B)(ii) (No change.)

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678

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CHAPTER 117. CONTROL OF AIR  
POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§117.10, 117.400, 117.403, 117.8000, and 117.9030.

If adopted, amended §§117.10, 117.400, 117.403, 117.8000, and 117.9030 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for nonattainment areas designated with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 parts per million (ppm) with a July 20, 2018 attainment deadline. Based on 2017 monitoring data, the DFW area did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with FCAA, §181(a)(5). The EPA proposed to reclassify the DFW area to serious nonattainment for the 2008 eight-hour ozone NAAQS as published in the November 14, 2018 *Federal Register* (83 FR 56781). On August 7, 2019, the EPA signed the final reclassification notice.

With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the nitrogen oxides (NO<sub>x</sub>) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(f). Although the eight-county Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, the commission determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking that affect the HGB area.

The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*; Final Rule, published in the *Federal Register* on March 6, 2015 (80 FR 12264), specifies an attainment date of July 20, 2021 for serious nonattainment areas. FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of NO<sub>x</sub>. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979).

Depending on the classification of an area designated nonattainment for a NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman,

Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold for those nine counties remains at the level required for serious nonattainment areas, which is the potential to emit (PTE) of 50 tons per year (tpy) of NO<sub>x</sub>. Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008 standard, which is the PTE of 100 tpy of NO<sub>x</sub>. With reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is the PTE of 50 tpy of NO<sub>x</sub> emissions. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County. The emission reduction requirements from this proposed rulemaking would result in reductions in ozone precursors in Wise County. The proposed compliance date for implementing control requirements and emission reductions for the DFW area is July 20, 2021, the attainment date for serious nonattainment areas under the 2008 eight-hour ozone NAAQS.

The proposed rulemaking would revise Chapter 117 to implement RACT for all major sources of NO<sub>x</sub> in the DFW area as required by FCAA, §172(c)(1) and §182(f). The commission previously adopted Chapter 117 RACT rules for sources in the DFW area as part of the SIP revision adopted May 23, 2007 (Rule Project Number 2006-034-117-EN) for the 1997 eight-hour ozone standard, and the EPA approved these rules on December 3, 2008 (73 FR 73562). The commission adopted Chapter 117 RACT rules for sources in the DFW area as part of a SIP revision adopted July 3, 2015 (Rule Project Number 2013-049-117-AI) for the 2008 eight-hour ozone standard for the moderate nonattainment area, and the EPA approved these rules on September 22, 2017 (82 FR 44320).

The commission proposes amendments to the following sections associated with the DFW 2008 eight-hour ozone RACT rulemaking: Subchapter A, Definitions, §117.10; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, §117.400 and §117.403; Subchapter G, General Monitoring and Testing Requirements, Division 1, Compliance Stack Testing and Report Requirements, §117.8000; and Subchapter H, Administrative Provisions, Division 1, Compliance Schedules, §117.9030.

The commission proposes clarifications and minor revisions that would affect sources in other areas covered by Chapter 117, including proposed changes to stack testing provisions for compliance flexibility for stationary reciprocating internal combustion engines and clarifying the restriction on operating hours for exempt stationary diesel and dual-fuel engines located at major sources of NO<sub>x</sub> in the nine-county DFW area, excluding Wise County. These proposed changes are discussed in detail in the Section by Section Discussion section of this preamble.

The commission proposes to revise Chapter 117, Subchapter B, Division 4 to change the requirements for major industrial, commercial, or institutional (ICI) sources of NO<sub>x</sub> in Wise County to address NO<sub>x</sub> RACT requirements for serious nonattainment ar-

reas. Proposed revisions to Chapter 117, Subchapter B, Division 4 would require some owners or operators of major ICI sources of NO<sub>x</sub> in Wise County to reduce NO<sub>x</sub> emissions from certain stationary sources and source categories to satisfy RACT requirements. Identical to the definition of a major source in the other nine DFW area counties, a major source of NO<sub>x</sub> in Wise County is any stationary source or group of sources located within a contiguous area and under common control that emits or has a PTE equal to or greater than 50 tpy of NO<sub>x</sub>. In this proposed rulemaking, newly identified process heaters and stationary internal combustion gas-fired engines would be subject to existing controls in Wise County. The proposed rulemaking would also extend rule applicability to incinerators, a newly identified stationary source category in Wise County. Proposed revisions to Chapter 117, Subchapter B, Division 4 would also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements associated with Chapter 117, Subchapter B, Division 4 to the affected sources located in Wise County. These requirements are necessary to ensure compliance with the existing emission specifications and to ensure that NO<sub>x</sub> emission reductions are achieved from the units that become subject to the requirements of Chapter 117, Subchapter B, Division 4. Specific discussion associated with the proposed emission specifications and other requirements in the proposed revisions to Chapter 117, Subchapter B, Division 4 are provided in the Section by Section Discussion section of this preamble.

The commission estimates that this proposed rulemaking would result in a 0.26 tons per day reduction of NO<sub>x</sub> from major ICI sources in Wise County. In the RACT rules adopted for the May 23, 2007 DFW SIP revision, the state fulfilled NO<sub>x</sub> RACT requirements for the nine-county DFW 1997 eight-hour ozone serious nonattainment area through adoption of emissions specifications in §117.410. In the RACT rules adopted for the July 10, 2015 DFW SIP revision, the state fulfilled NO<sub>x</sub> RACT requirements for the 10-county DFW 2008 eight-hour ozone moderate nonattainment area through adoption of RACT emissions specifications for Wise County in §117.405. With this proposed rulemaking, the commission implements and fulfills NO<sub>x</sub> RACT requirements for major sources of NO<sub>x</sub> in Wise County with a PTE of 50 tpy of NO<sub>x</sub>.

#### Section by Section Discussion

In addition to the proposed amendments associated with implementing RACT for the DFW area and specific minor clarifications and corrections discussed in greater detail in this section, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble. Comments received regarding sections and rule language associated only with reformatting and minor stylistic changes will not be considered, and no changes will be made based on such comments.

#### Subchapter A: Definitions

##### §117.10, Definitions

The commission proposes to revise the definition of "Major source" in §117.10(29). Proposed changes include revision to §117.10(29)(B) to remove all references to county names and insert a reference to the term "Dallas-Fort Worth eight-hour ozone nonattainment area" to reflect the change in classification status

for Wise County and the deletion of existing §117.10(29)(C). The applicability threshold for Wise County is now the same as that for the other nine counties included in the DFW ozone nonattainment area and separating Wise County from the other nine DFW area counties is no longer necessary. Proposed changes also include re-lettering existing §117.10(29)(D) and (E) to §117.10(29)(C) and (D) to accommodate the deletion of existing §117.10(29)(C). No substantive changes are intended to be made to existing subparagraphs (D) and (E).

#### Subchapter B: Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas

##### Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

To address RACT requirements for major sources of NO<sub>x</sub> at the new 50 tpy major source threshold located in Wise County, the commission proposes revisions to Subchapter B, Division 4 that would include amending rules applicable to any major stationary source of NO<sub>x</sub> in Wise County that emits or has a PTE of 50 tpy of NO<sub>x</sub>. The commission proposes to expand the list of applicable unit types at major ICI stationary sources of NO<sub>x</sub> in Wise County in proposed Subchapter B, Division 4. The commission also proposes technical corrections to exemption provisions for units located at major ICI stationary sources in the nine counties of the DFW 2008 eight-hour ozone nonattainment area, excluding Wise County, i.e. Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

##### §117.400, Applicability

The commission proposes revisions to §117.400 to clarify which unit types located in specific counties in the DFW eight-hour ozone nonattainment area would be subject to the proposed revisions of Subchapter B, Division 4. The commission is not proposing to change the current list of applicable units located at major sources of NO<sub>x</sub> in existing §117.400(a) for units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County. The commission proposes §117.400(b)(4) to specify a new unit category, incinerators, located at major sources of NO<sub>x</sub> located in Wise County. The commission identified five incinerators in the 2017 point source emissions inventory (EI) at major sources of NO<sub>x</sub> in Wise County.

##### §117.403, Exemptions

The commission proposes revisions to §117.403 to clarify exemption criteria for units that would be exempt from specified requirements of Subchapter B, Division 4. The commission is not proposing to change the current list of exempt unit types, sizes, or uses in existing §117.403(a) for units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County. However, as part of this rulemaking, the commission is proposing technical revisions intended to correct inadvertent errors in existing §117.403(a), made during a previous rulemaking adopted May 23, 2007 (Rule Project Number 2006-034-117-EN), to ensure consistency with the agency's intent. The commission proposes to require new and existing stationary diesel and dual-fuel engines claimed exempt under existing §117.403(a) to comply with the operating hours restriction requirements of existing §117.410(f) by adding a rule reference to §117.410(f) in §117.403(a). This clarification is proposed to be consistent with existing recordkeeping requirements in §117.445(f)(9) that are already referenced in §117.403(a) and that relate to the operating requirements in §117.410(f).

Existing §117.410(f) prohibits any person from starting or operating any stationary diesel or dual-fuel engine in any of the nine DFW area counties, which excludes Wise County, for testing or maintenance of the engine itself between the hours of 6:00 a.m. and noon, except for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours; to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs; or fire-water pumps for emergency response training conducted from April 1 through October 31. When this rule was adopted for the nine-county area as part of a May 23, 2007 rulemaking under the 1997 eight-hour ozone NAAQS (Rule Project Number 2006-034-117-EN), the provision was identical to a requirement implemented for the HGB ozone nonattainment area. The requirement delays starting or operation of these engines for testing or maintenance until after noon to help reduce NO<sub>x</sub> emissions and limit ozone formation. Owners or operators of these engines are required under existing §117.445(f)(9) to maintain records of each time the engine is operated for testing and maintenance, including: dates of operation; start and end times of operation; identification of the engine; and total hours of operation for each month and for the most recent 12 consecutive months. Existing §117.403(a) already references the recordkeeping requirements of §117.445(f)(9) but does not currently reference the actual operating restrictions of §117.410(f). This proposed change would be a technical correction to add the operating restrictions reference for engines located at major sources of NO<sub>x</sub> in the nine DFW area counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties).

Based on 2017 point source Emissions Inventory (EI) data, the commission identified 40 stationary diesel and dual-fuel engines located in the nine counties for which the owner or operator may currently claim exemption under existing §117.403(a), specifically as backup, standby, firewater pump, or emergency engines and generators. If adopted with this current rulemaking action, the operating restrictions under §117.410(f) would apply to stationary diesel and dual-fuel engines claimed exempt located at NO<sub>x</sub> major sources in the nine-county DFW area, excluding Wise County, and would prohibit their operation for testing or maintenance between 6:00 a.m. and noon, similar to the existing requirements for exempt units located at major and minor sources of NO<sub>x</sub> in the HGB area and at minor sources of NO<sub>x</sub> in the nine counties for the DFW area. For such units typically used in emergency situations or designated as low-use engines, the commission does not expect this proposed requirement to interfere with or restrict the normal operation of these engines. The commission has stated this in prior rulemaking actions concerning these provisions in Chapter 117 (26 TexReg 8110 and 32 TexReg 3206). The commission does not expect non-exempt units to be affected because these engines should already be complying with the operating restrictions and maintaining appropriate records.

The commission proposes §117.403(b)(6) to exempt flares and proposes §117.403(b)(7) to exempt incinerators with a maximum rated capacity less than 40 million British thermal units per hour. These proposed exemptions for these unit types located at major sources of NO<sub>x</sub> in Wise County are consistent with existing exemptions for the nine counties of the DFW 1997 eight-hour ozone nonattainment area in existing §117.403(a)(3). The commission identified five incinerators in the 2017 point source EI at major sources of NO<sub>x</sub> in Wise County that would qualify for exemption under proposed §117.403(b)(7). Because these incinerators currently qualify for exemption based on heat input,



the commission is not currently proposing emission specifications for incinerators located in Wise County.

The commission identified 17 stationary diesel-fired engines in the 2017 point source EI located at major sources of NO<sub>x</sub> in Wise County. All 17 units were reported to the commission by regulated entities as emergency backup diesel engines and generators. An existing exemption in §117.403(b)(3) exempts all stationary diesel, reciprocating internal combustion engines located at NO<sub>x</sub> major sources in Wise County. Because the commission did not identify a stationary diesel engine used for any other purpose other than for emergency backup situations, the commission is not currently proposing emission specifications for this category of equipment located in Wise County. These engines will continue to be exempt from the requirements in Subchapter B, Division 4.

#### Subchapter G: General Monitoring and Testing Requirements

##### Division 1: Compliance Stack Testing and Report Requirements §117.8000, Stack Testing Requirements

The commission proposes §117.8000(f)(1) - (4) to specify the requirements of using an alternate test method when performing emissions testing on stationary internal combustion engines. Stack testing provisions for emissions testing of NO<sub>x</sub> and carbon monoxide (CO) under Chapter 117 currently specify certain EPA-approved compliance reference test methods. Proposed §117.8000(f) would allow owners or operators of stationary internal combustion engines that trigger the stack testing requirements of Subchapter G, Division 1 to use American Society for Testing and Materials (ASTM) Method D6348-03 to measure the emissions of NO<sub>x</sub> and CO from stationary internal combustion engines in lieu of the EPA Reference Test Methods 7E or 20 for NO<sub>x</sub>, and 10, 10A, or 10B for CO, as currently specified in existing §117.8000(c), when demonstrating compliance with an applicable emission standard under Chapter 117. All other applicable requirements for emissions testing in existing §117.8000(c) would continue to apply. For example, if the owner or operator is required to test for oxygen or ammonia emissions, the owner or operator would be required to continue to use the EPA reference test methods for oxygen or ammonia as specified in §117.8000(c). Proposed §117.8000(f)(1) specifies that the owner or operator electing to use ASTM Method D6348-03 shall notify the appropriate regional office and any local air pollution control agency having jurisdiction in writing at least 15 days prior to the date that the emissions performance test occurs. The commission also proposes in §117.8000(f)(2) that the analyte spiking procedure of Annex A5 to ASTM Method D6348-03 must be performed using NO<sub>x</sub> calibration gas standards certified for total NO<sub>x</sub>. The owner or operator electing to use ASTM Method D6348-03 to determine NO<sub>x</sub> emissions from an engine may use any gas combination as long as it is a certified EPA protocol gas. The term "Nitrogen oxides (NO<sub>x</sub>)" is defined in existing §117.10(34). This would allow owners or operators to use nitric oxide, nitrogen dioxide, or any combination thereof so long as the components of the certified calibration gas do not interfere with the gas being detected.

To ensure strict adherence to all requirements of ASTM Method D6348-03 and associated Annexes A1 through A8 to ASTM Method D6348-03, the commission proposes §117.8000(f)(3) to require owners or operators electing to use the ASTM method to document in the compliance stack report required by existing §117.8010 that the owner or operator followed all such requirements, including all quality assurance and quality control

procedures of all eight annexes. These proposed requirements would be in addition to the existing requirements of §117.8010 that the test report must contain the information specified in existing §117.8010.

The commission proposes §117.8000(f)(4) to specify that minor modifications to ASTM Method D6348-03 would be allowed for owners or operators electing to use the ASTM method as long as those minor modifications meet the conditions of existing §117.8000(d)(1) and (2).

The commission proposes these changes in an effort to afford compliance flexibility to owners or operators of stationary engines triggering emissions performance testing under Chapter 117. The EPA has already approved the use of ASTM Method D6348-03 for stationary compression-ignited and spark-ignited internal combustion engines under 40 Code of Federal Regulations Part 60, Subparts IIII and JJJJ, respectively. Because the commission is unaware of the EPA approving the use of ASTM Method D6348-03 for emission unit types other than for stationary internal combustion engines, the commission is not proposing use of ASTM Method D6348-03 for any other emission unit type covered by Chapter 117.

#### Subchapter H: Administrative Provisions

##### Division 1: Compliance Schedules

##### §117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The commission proposes changes to the compliance schedule for major sources of NO<sub>x</sub> located in Wise County in existing §117.9030(a) for units subject to the emission specifications of §117.405, including revised dates for submittal of the initial and final control plan and the final rule compliance deadline for the proposed rule changes in Chapter 117, Subchapter B, Division 4. Proposed §117.9030(a)(1)(A) would preserve prior compliance deadlines for submittal of the initial control plan and all other requirements of Chapter 117, Subchapter B, Division 4 for units subject to the emission specifications of §117.405 that were subject to the prior definition of "Major source" for Wise County in §117.10(29)(C) before the effective date of the current rulemaking. The commission proposes to move the requirements of existing §117.9030(a)(1)(A) to proposed §117.9030(a)(1)(A)(i). The commission proposes to move the requirements of existing §117.9030(a)(1)(B) to proposed §117.9030(a)(1)(A)(ii). Existing §117.9030(a)(1)(A) and (B) are proposed for deletion. These changes are intended to provide clarity and distinguish between the prior compliance deadline of January 1, 2017 in proposed §117.9030(a)(1)(A) and the proposed deadline of July 20, 2021 in proposed §117.9030(a)(1)(B). They are not intended to change the existing requirements for those units that had a rule compliance deadline of January 1, 2017.

The commission proposes §117.9030(a)(1)(B) to specify the requirements for units subject to the emission specifications of §117.405 on or after the effective date of this rulemaking that would have a compliance deadline of July 20, 2021. Proposed subparagraph (B)(i) would specify that owners or operators of stationary sources of NO<sub>x</sub> in Wise County subject to the requirements of §117.405 would be required to submit the initial control plan required by §117.450 no later than January 15, 2021. Proposed subparagraph (B)(ii) would require the owner or operator of the stationary source of NO<sub>x</sub> in Wise County subject to the requirements of §117.405 to demonstrate compliance with all other requirements of proposed Chapter 117, Subchapter B, Division 4

no later than July 20, 2021, which would also be the deadline for submittal of the final control plan required by existing §117.452.

The commission does not propose any changes to existing §117.9030(a)(2), which specifies that the owner or operator of any stationary source of NO<sub>x</sub> that becomes subject to the requirements of proposed Chapter 117, Subchapter B, Division 4 on or after July 20, 2021, shall comply with the requirements of Chapter 117, Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject. For example, new units placed into service after July 20, 2021 would be required to comply within 60 days after startup of the unit. Existing units previously exempt from the rule but no longer qualifying for that exemption after July 20, 2021 would be required to comply with the proposed rule no later than 60 days after the unit no longer qualifies for the exemption.

The commission proposes to remove existing §117.9030(a)(3) since it is no longer necessary to include language concerning the removal of rule compliance requirements in Wise County upon *Texas Register* publication that Wise County's nonattainment designation for the 2008 eight-hour ozone NAAQS is no longer legally effective. The commission has no intent at this time to publish a notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 eight-hour ozone NAAQS. This language was added during a previous rulemaking (Rule Project Number 2013-049-117-A1) due to litigation on this issue, which has since ended.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to comply with the requirements of the FCAA under §172(c)(1) and §182(f). The FCAA requires the state to submit a SIP revision that implements RACT for all major sources of NO<sub>x</sub>.

#### Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be in compliance with the federal and state law, continued protection of the environment and public health, and fair administration of the NO<sub>x</sub> emission standards for the DFW area. It is estimated that the proposed rules would reduce the amount of NO<sub>x</sub> in the DFW area by 93.4 tpy or 0.26 tons per day based on reported annual operating hours.

Individuals and the public should not experience any fiscal implications from the implementation of the proposed rules. The proposed rules may result in fiscal implications for a limited number of businesses in the oil, gas, and liquid hydrocarbons industry in Wise County. The agency estimates that the rules will affect five businesses that operate 13 oil and gas facilities or sites. Within these 13 sites, the agency estimates there are 45 emission sources. The agency estimates that one source is an industrial process heater and the other 44 are industrial gas-fired engines.

The proposed rulemaking would require affected businesses to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform

quarterly and periodic annual emissions compliance testing on engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the proposed rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing.

The proposed rules would require some owners or operators of major ICI sources of NO<sub>x</sub> in the DFW area to control emissions. There would be fiscal implications for some industrial entities required to install controls or modify operations. Fiscal implications could vary depending on the type of emission source, the size of the source, and the type of emission control technology chosen by the affected business.

For the first year, the fiscal impact is due to capital costs, associated with equipment purchase, labor, and installation; and annual costs, associated with emissions compliance testing and equipment maintenance, estimated at \$524,340. Annual impacts after the first year are associated with emissions compliance testing and equipment maintenance, with a fiscal amount of \$559,000 for years two, three, four, and five combined. Combined total capital and total annual costs for the first five years for all affected ICI units to comply with the proposed requirements of Chapter 117, Subchapter B, Division 4 are estimated at \$1,083,340, with total capital estimated to be \$272,340 and total annual estimated to be \$811,000. The cost-effectiveness for the proposed emission reductions for the first five years the proposed rules are in effect is estimated at \$2,319 per ton of NO<sub>x</sub> reduced.

All 45 affected emission sources or units would be required to install and operate a totalizing fuel flow meter to monitor fuel usage to demonstrate compliance with the proposed rules and monitor gas and liquid fuel usage. The estimated cost to purchase and install a totalizing fuel flow meter is \$2,500 per meter. The agency estimates that there are not any annual operating and maintenance costs for a totalizing fuel flow meter. Fuel metering costs, therefore, have a combined total capital cost of \$112,500 for all 45 affected ICI units located at NO<sub>x</sub> major sources in Wise County. Compliance emissions stack testing is estimated at \$5,000 per test. All engines would be required to conduct initial and periodic compliance emissions tests as well as quarterly tests, with quarterly emissions testing using a portable NO<sub>x</sub> analyzer estimated at \$125 per test.

Three of the total 12 rich-burn engines would be required to install non-selective catalytic reduction (NSCR) with an air-fuel ratio (AFR) controller to reduce NO<sub>x</sub> emissions to the NO<sub>x</sub> standard set for rich-burn engines in the current rule. One rich burn engine would be required to install additional catalyst elements to an existing NSCR. None of the total 32 lean-burn engines would require combustion modifications to meet the current NO<sub>x</sub> standards for lean-burn engines. Of the total 11 process heaters, one would be subject to the current NO<sub>x</sub> emission specification for process heaters, and this one heater may require installation and operation of dry low-NO<sub>x</sub> (DLN) combustors along with a single burner test to verify burner design and operation to meet the current rule standard. Combined total capital costs due to retrofit for all affected ICI units to meet current rule standards are estimated at \$159,840.

Capital costs for a new NSCR system are approximately \$30 per horsepower (hp). For an existing system, the cost is approximately \$10/hp to add catalyst elements to further reduce NO<sub>x</sub> emissions. Three units are anticipated to require new NSCR, and one is anticipated to require additional catalyst elements to

meet the current NO<sub>x</sub> emission specification for rich-burn gas-fired engines. The remaining eight units are expected to meet the current emission standard without additional controls or engine modifications. Annual costs for operation and maintenance for new systems are approximately \$3,000 per year per engine and assumed to be half of that for existing NSCR systems requiring only additional catalyst elements. Capital costs associated with new NSCR and secondary catalyst retrofits for four units are estimated to be \$59,840 with annual operating and maintenance costs for new systems and additional catalysts of \$10,500. For the first five years the proposed rules are in effect, these annual costs are estimated at \$52,500. No capital costs due to retrofits or combustion modifications are expected for the 32 lean-burn gas-fired engines for these units to meet the current NO<sub>x</sub> emission specifications for lean-burn engines. Therefore, no annual costs are expected in association with emissions control systems for these 32 units.

Capital costs for totalizing fuel flow meters, expected to be required for all 12 rich-burn and 32 lean-burn gas-fired engines that become newly subject to the proposed requirements of Chapter 117, Subchapter B, Division 4 and are not exempt, are estimated to total \$110,000. For all 44 engines, initial and periodic compliance emissions tests are required along with three quarterly checks. These annual compliance costs are estimated to be \$236,500 in the first year and every other year. Quarterly checks, required for years in which periodic stack testing is not required, are estimated to cost \$22,000 per year for all 44 engines. All capital due to retrofit, operation and maintenance, emissions testing, and fuel meter costs for these 44 units are estimated to total \$416,840 for the first year; \$247,000 for years three and five; and \$32,500 for years two and four. These same costs are estimated to total \$975,840 for the first five years the proposed rules are in effect for all 44 gas-fired engines. Application of NSCR on rich-burn gas-fired engines is estimated to achieve a reduction in NO<sub>x</sub> emissions of 0.25 tons per day. No reductions in NO<sub>x</sub> emissions are anticipated from these activities on lean-burn gas-fired engines.

To meet the current NO<sub>x</sub> standard for gas-fired process heaters, one unit may need to install and operate DLN combustors, which have a capital cost of approximately \$7,500 per burner, per heater for a conventional-style burner. A single burner test is usually required to prove the design is efficient on the unit, and the estimates for this single test may total \$25,000 per heater. A reasonable assumption for the number of burners to meet proposed emission levels is 10 burners per heater for installation; although fewer burners may be necessary. Capital costs associated with the retrofit for the one non-exempt unit are estimated at \$75,000, with an additional capital cost of approximately \$25,000 for the burner tests. Annual operating and maintenance costs associated with the DLN combustors are expected to range from minimal to zero considering the type of fuel combusted and size of the heater. Totalizing fuel metering costs for the one unit are estimated to be \$2,500. Annual costs associated with initial compliance emissions testing are estimated at \$5,000 for the one process heater newly subject to the current emission specification. Combined capital costs are estimated at \$102,500, and total annual costs are estimated at \$5,000. All capital due to retrofit, operation and maintenance, emissions testing, and fuel meter costs for the one unit are estimated to total \$107,500. These burner retrofits are anticipated to achieve NO<sub>x</sub> emission reductions of approximately 0.003 tons per day.

In summary, the agency estimated the following example costs (including the capital expense of a retrofit) to implement RACT over a five-year period: \$524,340 in Year 1; \$32,500 in Year 2; \$247,000 in Year 3; \$32,500 in Year 4; and \$247,000 in Year 5. These example costs reflect that all capital costs occur in the first year of the five-year period with any annual cost due to emissions performance testing also occurring in the first year of the five-year period. The variability of example costs per year over the five-year period is mainly due to the initial and periodic compliance emissions tests along with the quarterly emissions checks associated with stationary internal combustion engines required by the rules in Chapter 117.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect.

#### Small Business and Micro-Business Assessment

After an analysis of the business information available to the public and in the agency's records, the agency estimates that two of the businesses may be categorized as small businesses with fewer than 100 employees or less than \$6 million in annual gross receipts. One of those businesses may also be categorized as a micro-business.

These two businesses operate sites with emission sources that are already subject to state or federal regulations concerning air emission compliance, such as air permitting, emissions and parametric monitoring, recordkeeping, and reporting requirements. These two businesses may experience costs over the next five years to implement RACT for all major sources of NO<sub>x</sub>.

#### Small Business Regulatory Flexibility Analysis

As required by Texas Government Code, §2006.002, the commission conducted an Economic Impact Statement and Regulatory Flexibility Analysis.

The commission estimates that two businesses with emission sources in Wise County may be categorized as small businesses and may experience a negative economic impact due to implementation of the proposed rules. One of the businesses may also be categorized as a micro-business. In accordance with Chapter 117, Subchapter B, Division 4, the businesses will need to comply with emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on engines, submit compliance reports, and maintain records. None of the engines owned by either business will require a retrofit, which greatly reduces the expense. The commission estimates these expenses for the two businesses.

#### Figure: 30 TAC Chapter 117--Preamble

Under Texas Government Code, §2006.002(c-1), the commission is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health,

safety, and environmental welfare of the state. The commission developed this proposed rulemaking to comply with the FCAA and state law. The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for ozone nonattainment areas designated with a classification of moderate or higher. The DFW area is currently classified as a serious nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 ppm with a July 20, 2021 attainment deadline. With reclassification of the DFW area to serious nonattainment, the major source emissions threshold for Wise County is the PTE of 50 tpy of NO<sub>x</sub> emissions.

Because a variance from the federal standard would not be consistent with the health, safety, and environmental and economic welfare of the state, no alternative regulatory methods were considered or recommended as part of this analysis.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation in Wise County and may increase the number of individuals subject to its applicability. The agency estimates that five additional businesses will be subject to the rule. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the amendments in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if they did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed amendments is to revise Chapter 117 to implement RACT for all major sources of NO<sub>x</sub> in the DFW area as required by FCAA, §172(c)(1) and §182(f). The proposed amendments would implement RACT in Wise County to reflect the change in the major source threshold for Wise County to serious for the 2008 eight-hour ozone NAAQS. The proposed amendments would require owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the proposed rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. The proposed amendments also update allowed emission test methods for engines.

As discussed in the Fiscal Note: Costs to State and Local Government section of this preamble, the proposed amendments are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, these amendments do not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These proposed amendments would implement NO<sub>x</sub> RACT in Wise County to reflect the change in the major source threshold for Wise County, as required by the EPA's change in designation of the DFW 2008 eight-hour ozone nonattainment area to serious nonattainment, and update allowed emission test methods for engines.

The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for ozone nonattainment areas designated with a classification of moderate or higher. The DFW 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, is currently classified as a serious nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 ppm with a July 20, 2021 attainment date. The EPA signed the final reclassification notice to reclassify the DFW area from moderate to serious on August 7, 2019. With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the NO<sub>x</sub> RACT requirements mandated by FCAA, §172(c)(1) and §182(f).

Depending on the classification of an area designated nonattainment for the ozone standard, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold remains at the serious classification level, which is the PTE of 50 tpy of NO<sub>x</sub>. The major source threshold for Wise County, which was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area, is based on a classification of moderate under the 2008 standard, or the PTE of 100 tpy of NO<sub>x</sub>. With the reclassification of DFW as a serious nonattainment area under the 2008 eight-hour ozone NAAQS, the major source emission threshold for Wise County is the PTE of 50 tpy of NO<sub>x</sub> emissions. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County.

The proposed amendments would revise Chapter 117 to implement NO<sub>x</sub> RACT in Wise County lowering the major source

threshold to 50 tpy of NO<sub>x</sub> and requiring owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the proposed rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. The proposed amendments also update allowed emission test methods for engines.

The proposed rulemaking implements requirements of 42 United States Code (USC) §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC §7410. States are not free to ignore the requirements of 42 USC §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The proposed amendments would revise Chapter 117 to implement NO<sub>x</sub> RACT in Wise County to reflect the change in the major source threshold for Wise County to 50 tpy of NO<sub>x</sub> and update allowed emission test methods for engines.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that SB 633 will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of SB 633 was not large. This conclusion was based, in part, on the criteria set forth in SB 633 that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs

for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC §7410, the commission routinely proposes and adopts rules into the SIP. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every rule adopted into the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules included in the SIP will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed amendments is to revise Chapter 117 to implement NO<sub>x</sub> RACT in Wise County to reflect the change in the major source threshold to 50 tpy of NO<sub>x</sub> for Wise County and update allowed emission test methods for engines. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "Major environmental rule"; it also does not meet any of the four applicability criteria for a major environmental rule.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed amendments is to implement RACT for all NO<sub>x</sub> emission sources in the DFW 2008 eight-hour ozone NAAQS nonattainment area, as required by FCAA, §172(c)(1) and §182(f). The proposed rulemaking would revise Chapter 117 to implement NO<sub>x</sub> RACT in Wise County to reflect the change in the major source threshold to 50 tpy of NO<sub>x</sub> for Wise County and update allowed emission test methods for engines. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed amendments fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in NO<sub>x</sub> emission reductions in ozone nonattainment areas that may contribute to the timely attainment of the 2008 eight-hour ozone NAAQS and reduce public exposure to NO<sub>x</sub>. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed revisions to Chapter 117 are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of

the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Houston on October 14, 2019, at 2:00 p.m. in the auditorium of the Texas Department of Transportation located at 7600 Washington Avenue; and in Arlington on October 17, 2019 at 2:00 p.m. in the Arlington City Council Chambers located at 101 Abram Street. The hearings are 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; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-074-117-AI. The comment period closes on October 28, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Javier Galván, Air Quality Planning Section, at (512) 239-1492.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §117.10

#### Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning

Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC) §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC §§7401, *et seq.*

§117.10. *Definitions.*

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

(B) Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of:

(i) for the purposes of Subchapter D of this chapter (relating to Combustion Control at Minor Sources in Ozone Nonattainment Areas), Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; or

(ii) for all other divisions of this chapter, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.

(C) Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C, Divisions 1 and 4 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources; and Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, independent power producer, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur; or

(ii) Dallas-Fort Worth eight-hour;

(B) for the purposes of Subchapter C, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in the Houston-Galveston-Brazoria ozone nonattainment area;

(C) for the purposes of Subchapter B, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (B) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers; or

(D) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its

successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014) and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (August 13, 2014)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation;

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or

(vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014)) if the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

(B) An emergency situation does not include:

(i) operation for training purposes or other foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10<sup>11</sup>) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10<sup>11</sup>) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.



(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides ( $\text{NO}_x$ ) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 tpy of  $\text{NO}_x$  and is located in the Dallas-Fort Worth eight-hour ozone nonattainment area [~~Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County~~];

~~(C) at least 100 tpy of  $\text{NO}_x$  and is located in Wise County;~~

~~(C)~~ [(D)] at least 25 tpy of  $\text{NO}_x$  and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(D) [(E)] the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides ( $\text{NO}_x$ )--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen ( $\text{O}_2$ ) correction basis, the following equation must be used. Figure: 30 TAC §117.10(35) (No change.)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane, propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indi-

cia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, 117.310, 117.1010, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.310, 117.1010, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO<sub>x</sub>) at a major source, as defined in this section;

(C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;

(E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; or

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO<sub>x</sub> at a major source, as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

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

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SUBCHAPTER B. COMBUSTION CONTROL  
AT MAJOR INDUSTRIAL, COMMERCIAL,  
AND INSTITUTIONAL SOURCES IN OZONE  
NONATTAINMENT AREAS  
DIVISION 4. DALLAS-FORT WORTH  
EIGHT-HOUR OZONE NONATTAINMENT  
AREA MAJOR SOURCES

**30 TAC §117.400, §117.403**

Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the

policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC) §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC §§7401, *et seq.*

§117.400. *Applicability.*

(a) The provisions of this division apply to the following units located at any major stationary source of nitrogen oxides (NO<sub>x</sub>) located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County:

- (1) industrial, commercial, or institutional boilers and process heaters;
- (2) stationary gas turbines;
- (3) stationary internal combustion engines;
- (4) duct burners used in turbine exhaust ducts;
- (5) lime kilns;
- (6) metallurgical heat treating furnaces and reheat furnaces;
- (7) incinerators;
- (8) glass, fiberglass, and mineral wool melting furnaces;
- (9) fiberglass and mineral wool curing ovens;
- (10) natural gas-fired ovens and heaters;
- (11) natural gas-fired dryers used in organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying processes;
- (12) brick and ceramic kilns; and
- (13) lead smelting reverberatory and blast (cupola) furnaces.

(b) The provisions of this division apply to the following units located at any major stationary source of NO<sub>x</sub> located in Wise County:

- (1) industrial, commercial, or institutional process heaters;
- (2) stationary gas turbines; ~~and~~
- (3) stationary internal combustion engines; ~~and~~[-]
- (4) incinerators.

§117.403. *Exemptions.*

(a) Units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County exempted from the provisions of this division, except as specified in §§117.410(f), 117.440(i), 117.445(f)(4) and (9), 117.450, and 117.454 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration; Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) industrial, commercial, or institutional boilers or process heaters with a maximum rated capacity equal to or less than:

(A) 2.0 million British thermal units per hour (MMBtu/hr) for boilers; and

(B) 5.0 MMBtu/hr for process heaters;

(2) heat treating furnaces and reheat furnaces with a maximum rated capacity less than 20 MMBtu/hr;

(3) flares, incinerators with a maximum rated capacity less than 40 MMBtu/hr, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(4) dryers, heaters, or ovens with a maximum rated capacity of 5.0 MMBtu/hr or less;

(5) any dryers, heaters, or ovens fired on fuels other than natural gas. This exemption does not apply to gas-fired curing ovens used for the production of mineral wool-type or textile-type fiberglass;

(6) any glass, fiberglass, and mineral wool melting furnaces with a maximum rated capacity of 2.0 MMBtu/hr or less;

(7) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(8) any stationary diesel engine placed into service before June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis; and

(B) has not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(9) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis, in other than emergency situations; and

(B) meets the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998), and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(10) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(11) brick or ceramic kilns with a maximum rated capacity less than 5.0 MMBtu/hr;

(12) low-temperature drying and curing ovens used in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing in which nitrogen-containing resins, or other additives are used;

(13) stationary, gas-fired, reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp;

(14) electric arc melting furnaces used in steel production;

(15) forming ovens and forming processes used in mineral wool-type fiberglass manufacturing; and

(16) natural gas-fired heaters used exclusively for providing comfort heat to areas designed for human occupancy.

(b) Units located in Wise County exempted from the provisions of this division, except as specified in §§117.440(i), 117.445(f)(4), 117.450, and 117.452 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), include the following:

(1) industrial, commercial, or institutional process heaters with a maximum rated capacity less than 40 MMBtu/hr;

(2) stationary gas turbines and stationary internal combustion engines that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis; and

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(3) stationary, diesel, reciprocating internal combustion engines;

(4) stationary, dual-fuel, reciprocating internal combustion engines; ~~and~~

(5) stationary, gas-fired, reciprocating internal combustion engines with a hp rating less than 50 hp<sub>2</sub>[-]

(6) flares; and

(7) incinerators with a maximum rated capacity less than 40 MMBtu/hr.

(c) The emission specifications in §117.410(a)(1) and (c) of this title [~~relating to Emission Specifications for Eight-Hour Attainment Demonstration~~] do not apply to gas-fired boilers during periods that the owner or operator is required to fire fuel oil on an emergency basis due to natural gas curtailment or other emergency, provided:

(1) the fuel oil firing occurs during the months of November, December, January, or February; and

(2) the fuel oil firing does not exceed a total of 72 hours in any calendar month specified in paragraph (1) of this subsection.

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

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## SUBCHAPTER G. GENERAL MONITORING AND TESTING REQUIREMENTS

### DIVISION 1. COMPLIANCE STACK TESTING AND REPORT REQUIREMENTS

#### 30 TAC §117.8000

##### Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property;

THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC) §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC §§7401, *et seq.*

§117.8000. *Stack Testing Requirements.*

(a) When required by this chapter, the owner or operator of a unit subject to this chapter shall conduct testing according to the requirements of this section.

(b) The unit must be operated at the maximum rated capacity, or as near as practicable. Compliance must be determined by the average of three one-hour emission test runs. Shorter test times may be used if approved by the executive director.

(c) Testing must be performed using the following test methods:

(1) Test Method 7E or 20 (40 Code of Federal Regulations (CFR), Part 60, Appendix A) for nitrogen oxides (NO<sub>x</sub>);

(2) Test Method 10, 10A, or 10B (40 CFR Part 60, Appendix A) for carbon monoxide (CO);

(3) Test Method 3A or 20 (40 CFR Part 60, Appendix A) for oxygen (O<sub>2</sub>);

(4) for units that inject ammonia or urea to control NO<sub>x</sub> emissions, the Phenol-Nitroprusside Method, the Indophenol Method, or the United States Environmental Protection Agency (EPA) Conditional Test Method 27 for ammonia;

(5) Test Method 2 (40 CFR Part 60, Appendix A) for exhaust gas flow and following the measurement site criteria of Test Method 1, §11.1 (40 CFR Part 60, Appendix A), or Test Method 19 (40 CFR Part 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §8.1.3 (40 CFR Part 60, Appendix B); or

(6) American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition; ASTM Method D1826-88 or ASTM Method D3588-91 for calorific value; or alternate methods as approved by the executive director and the EPA [United States Environmental Protection Agency].

(d) EPA-approved [United States Environmental Protection Agency-approved] alternate test methods or minor modifications to the test methods specified in subsection (c) of this section may be used, as approved by the executive director, as long as the minor modifications meet the following conditions:

(1) the change does not affect the stringency of the applicable emission specification;

(2) the change affects only a single source or facility application.

(e) An owner or operator that chooses to install or relocate a boiler or process heater temporarily at an account for less than 60 consecutive calendar days may substitute the following in lieu of the requirements of subsections (b) - (d) of this section for stack testing required by this chapter. For the purposes of this subsection, the term "relocate" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a boiler or process heater from anywhere outside of that account.

(1) The owner or operator may use the results of previous testing conducted on the same boiler or process heater conducted according to subsections (b) - (d) of this section or a manufacturer's guarantee of performance. If previous testing is used, the owner or operator of the site temporarily installing the boiler or process heater shall maintain a record of the previous test report as specified by the record-keeping requirements under this chapter applicable to the site.

(2) The owner or operator shall physically remove the boiler or process heater from the account no later than 60 consecutive calendar days after the unit was installed at the account or comply with the testing requirements as specified in subsections (b) - (d) of this section.

(3) Extensions to the 60 consecutive calendar days limitation of this subsection will not be provided.

(f) ASTM Method D6348-03 may be used to determine NO<sub>x</sub> or CO emissions from stationary internal combustion engines in lieu of the test methods for NO<sub>x</sub> or CO specified in subsection (c) of this section if the owner or operator of the stationary engine subject to the testing requirements of this section meets the conditions of this subsection. All other applicable requirements in subsection (c) of this section continue to apply.

(1) Written notification of the use of ASTM Method D6348-03 must be submitted to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of testing.

(2) The analyte spiking procedure in Annex A5 to ASTM Method D6348-03 must be performed using NO<sub>x</sub> calibration gas standards certified for total NO<sub>x</sub>.

(3) All requirements outlined in Annexes A1 through A8 to ASTM Method D6348-03 must be followed. The test report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports) in addition to information demonstrating compliance with all requirements of ASTM Method D6348-03, including Annexes A1 through A8.

(4) Minor modifications to ASTM Method D6348-03 may be used, as approved by the executive director, as long as the minor modifications meet the conditions of subsection (d)(1) and (2) of this section.

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

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SUBCHAPTER H. ADMINISTRATIVE  
PROVISIONS  
DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §117.9030

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC) §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC §§7401, *et seq.*

§117.9030. *Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.*

(a) Reasonably available control technology emission specifications.

(1) The owner or operator of any stationary source of nitrogen oxides (NO<sub>x</sub>) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO<sub>x</sub> and is subject to §117.405(a) or (b) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall comply with the requirements of Subchapter B, Division 4 of this chapter (relating to Dal-

las-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) as follows:

(A) for units that were subject prior to February 20, 2020:

(i) submission of the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) was required by June 1, 2016; and

(ii) for units subject to the emission specifications of §117.405 of this title, compliance with all other requirements of Subchapter B, Division 4 of this chapter was required by January 1, 2017, and these units shall continue to comply with the requirements of Subchapter B, Division 4 of this chapter; and

(B) for units that become subject on or after February 20, 2020:

(i) submission of the initial control plan required by §117.450 of this title is required no later than January 15, 2021; and

(ii) for units subject to the emission specifications of §117.405 of this title, compliance with all other requirements of Subchapter B, Division 4 of this chapter is required as soon as practicable, but no later than July 20, 2021.

~~{(A) submit the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) no later than June 1, 2016; and}~~

~~{(B) for units subject to the emission specifications of §117.405(a) or (b) of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than January 1, 2017.}~~

(2) The owner or operator of any stationary source of NO<sub>x</sub> that becomes subject to the requirements of §117.405 of this title on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

~~{(3) Upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of a unit located at a major stationary source of NO<sub>x</sub> located in Wise County is not required to comply with the requirements of Subchapter B, Division 4 of this chapter.}~~

(b) Eight-hour ozone attainment demonstration emission specifications.

(1) The owner or operator of any stationary source of NO<sub>x</sub> in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO<sub>x</sub> and is subject to §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the requirements of Subchapter B, Division 4 of this chapter as follows:

(A) submit the initial control plan required by §117.450 of this title no later than June 1, 2008; and

(B) for units subject to the emission specifications of §117.410(a) of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than:

(i) March 1, 2009, for units subject to §117.410(a)(1), (2), (4), (5), (6), (7)(A), (8), (10), and (14) of this title;

(ii) March 1, 2010, for units subject to §117.410(a)(3), (7)(B), (9), (11), (12), and (13) of this title;

(C) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing in §117.410(f) of this title, and associated recordkeeping in §117.445(f)(9) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), as soon as practicable, but no later than March 1, 2009; and

(D) for any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions), comply with the run time meter requirements of §117.440(i) of this title (relating to Continuous Demonstration of Compliance), and recordkeeping requirements of §117.445(f)(4) of this title, as soon as practicable, but no later than March 1, 2009.

(2) The owner or operator of any stationary source of NO<sub>x</sub> that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903237

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 239-6812



## 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 Department proposes amendments to §57.971, concerning Definitions and §57.973, concerning Devices, Means and Methods. The proposed changes would 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.

The proposed amendment to §57.971 would alter 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 proposed amendment to §57.973, concerning Devices, Means, and Methods, would reduce the period of validity for a gear tag from 10 days to four 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 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 actual 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 four 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.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to the department and county governments as a result of administering or enforcing the rules. Parks and Wildlife Code, §12.1105, establishes procedures by which the department may dispose of unlawful fishing gear that is seized by the department. These procedures involve giving notice to the county court and require posting at the court courthouse.

The proposed amendments will not result in fiscal implications to any other units of state or local government.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect:

The public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state by reducing the negative impacts of abandoned fishing gear, the increased ability of the department to determine the impacts of various gears on fish populations, the removal of what effectively is litter, and the reduction of threats to human health and safety resulting from abandoned fishing gear.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an

agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest fisheries resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required. The department also has determined that the proposed amendment to §57.992 will not directly affect small businesses, micro-businesses, or rural communities. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: [ken.kurzawski@tpwd.texas.gov](mailto:ken.kurzawski@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

The amendments are proposed 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.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§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) - (22) (No change.)

(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, and customer number of the person using the device, and, except for and saltwater trotlines and crab traps fished under a commercial license, the date the device was set out.

(24) - (27) (No change.)

(28) Jug line--A fishing line with five or less hooks and a gear tag tied to a free-floating device.

(29) - (42) (No change.)

(43) Throwline--A fishing line with:

(A) five or less hooks; ~~and with~~

(B) one end attached to a permanent fixture;

(C) a float attached at or above the water line; and

(D) a gear tag ~~[Components of a throwline may also include swivels, snaps, rubber and rigid support structures].~~

(44) - (45) (No change.)

(46) Trotline--A nonmetallic main fishing line with:

(A) more than five hooks; ~~attached and with~~

(B) each end attached to a fixture;

(C) floats attached at or above the water line; and

(D) a gear tag.

(47) - (48) (No change.)

§57.973. *Devices, Means and Methods.*

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

(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) - (8) (No change.)

(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 4 ~~[10]~~ 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 width;

(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 width;

(D) (No change.)

(10) (No change.)

(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 length



and three inches in width. The buoy must have a gear tag attached [equipped with a gear tag]. A gear tag is valid for 4 [~~10~~] days after the date it is set out.

(A) - (B) (No change.)

(12) Perch traps. For use in salt water only.

(A) (No change.)

(B) It is unlawful to fish a perch trap that:

(i) - (ii) (No change.)

(iii) that 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 4 [~~10~~] days after date set out.

(13) - (21) (No change.)

(21) Throwline. For use in fresh water only.

(A) - (B) (No change.)

(C) It is unlawful to use a throwline:

(i) that is not equipped with a gear tag. A gear tag is valid for 4 [~~10~~] 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 width; 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 width.

(22) Trotline.

(A) (No change.)

(B) It is unlawful to use a trotline:

(i) (No change.)

(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 4 [~~10~~] days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(iii) - (iv) (No change.)

(v) with the main fishing line, ~~and~~ attached hooks, and stagings above the water's surface.

(C) In fresh water, it is unlawful to use a trotline:

(i) - (ii) (No change.)

(iii) for commercial purposes that is not marked by an orange float that is less than six inches in length and three inches in width, and attached to end fixture; 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 width attached to each end fixture.

(D) (No change.)

(23) (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 September 13, 2019.

TRD-201903268

Robert Sweeney

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 27, 2019

For further information, please call: (512) 389-4329

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The amendments adjust the payment threshold triggering electronic payments described in subsection (b) of this section. The comptroller adds the names of statutory cites throughout the section to conform with comptroller guidelines.

The comptroller amends subsection (b) to incorporate the higher threshold of \$500,000 provided under Government Code, §404.095 (Electronic Transfer of Certain Payments), in lieu of the lower threshold of \$100,000 found in the current section. Increasing the threshold will benefit taxpayers owing more than \$100,000 but less than \$500,000, many of whom are assessed a 5.0% penalty for not making timely State of Texas Financial Network (TexNet) payments as required under subsection (c) of this section.

The comptroller proposes new subsection (b)(1), to be effective for payments due beginning Jan. 1, 2019. Subsection (b)(1) increases from \$100,000 to \$500,000 the threshold requiring payment using TexNet. See Government Code, §404.095(e). The comptroller also adds an example to make the subsection easier to understand and renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (b)(2), currently subsection (b)(1), to make conforming changes. The comptroller explains the continuing TexNet electronic payment requirement for taxpayers paying \$100,000 or more and whom the comptroller notified of this requirement for a prior calendar year.

The comptroller proposes new subsection (b)(3) to explain that effective for payments due on or after January 1, 2019, taxpayers paying \$100,000 or more, but less than \$500,000, during the state fiscal year must make electronic payments, although TexNet is not mandatory for these payments. The comptroller also adds an example to make the subsection easier to understand and renumbers the subsequent paragraph.

The comptroller amends renumbered subsection (b)(4), currently subsection (b)(2), to make conforming changes regarding continuing requirements and to make a grammatical correction. The paragraph explains that payment requirements apply during

the calendar year that begins on January 1 of the fiscal year during which the comptroller determines taxpayers' payment thresholds.

The comptroller amends subsection (c)(2) to remove the word "combined" to eliminate ambiguity regarding the use of this term. Although the comptroller does not define this term, the intent of the original language was to address the submission of EDI reports in the same "enveloped file," which is a technical comptroller term. The word "combined" is unnecessary for the purpose of this subsection. The comptroller also removes the phrase "central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection" to remove any confusion that might arise from a reference to the TexNet deadline in subsection (c)(1). The 6:00 p.m. deadline refers to an internal process at the comptroller's office and is unnecessary for the purpose of this subsection.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: 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 amendments will benefit the public by providing more flexibility in making electronic payments for taxpayers remitting between \$100,000 and \$500,000 and clarifying the rule's provisions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendments could have a small indeterminate revenue loss for the state as there would likely be fewer 5.0% penalties issued for not filing timely TexNet payments. 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 amendments implement Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and Government Code, §404.095.

### §3.9. *Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2 (*State Taxation*), by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile,

or the taxpayer is filing a return or report other than a return showing a tax liability; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625 (*Electronic Transfer of Certain Payments*).

(1) This paragraph is effective with the state fiscal year beginning September 1, 2018, for payments due on or after January 1, 2019. This paragraph applies to a taxpayer who pays the comptroller a total of \$500,000 or more in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. The taxpayer shall transfer all payments in any category of payments or taxes that totaled \$500,000 or more to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies). This requirement applies to payments due beginning January 1 of each state fiscal year in which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$500,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$500,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using TexNet beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(2) [(+) Taxpayers who [have] paid the comptroller a total of \$100,000 or more in any [a] single category of payments or taxes and were notified by the comptroller of a TexNet payment requirement must continue to make those payments using TexNet for original or amended reports filed for the calendar year for which the taxpayer was notified [during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current fiscal year, shall transfer all payment amounts in that category of payments or taxes during the subsequent calendar year to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies)].

(3) Beginning January 1, 2019, taxpayers who paid \$100,000 or more, but less than \$500,000, in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in paragraph (4)(C) of this subsection. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. This requirement applies to payments due beginning January 1 of each state fiscal year for which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$100,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$100,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller

using one of the methods described in paragraph (4)(C) of this subsection beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(4) [(2)] Taxpayers who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes as listed in subparagraph (A) of this paragraph during the preceding state fiscal year, and whom [whø] the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax;
- (v) franchise tax;
- (vi) gasoline tax;
- (vii) diesel fuel tax;
- (viii) hotel occupancy tax;
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts tax;
- (xi) mixed beverage sales tax; and
- (xii) motor vehicle rental tax.

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) [A taxpayer making payment using TexNet.] Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted. TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files [combined] tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time[ to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection].

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 (Electronic Transfer of Certain Payments) using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626 (Electronic Filing of Certain Reports).

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax; and
- (v) motor fuel tax.

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 (Information Report) must file the information report electronically.

(C) Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages).

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6) (Definitions), 151.465(Applicability to Certain Brewers), and 151.466 (Applicability to Certain Manufacturers); and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

- (i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;
- (ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;

(iv) the information required by Tax Code, §151.462(b) (Reports by Brewers, Manufacturers, Wholesalers and Distributors) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203 (Suspension and Revocation of Permit);

(ii) impose a civil penalty under Tax Code, §151.703(d) (Failure to Report or Pay Tax);

(iii) impose a criminal penalty under Tax Code, §151.709 (Failure to Furnish Report; Criminal Penalty); and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

(E) The requirements of this paragraph apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Except as provided by Tax Code, §111.006 (Confidentiality of Information), information contained in the reports required by paragraphs (2), (3), and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552 (Public Information).

(6) The reports required by paragraphs (2), (3), and (4) of this subsection are required in addition to any other reports required by the comptroller.

(7) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063 (Penalty for Failure to Use Electronic Transfers and Filings), the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax due by elec-

tronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051 (Protest Payment Required), must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

Filed with the Office of the Secretary of State on September 12, 2019.

TRD-201903223

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: October 27, 2019

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



## SUBCHAPTER V. FRANCHISE TAX

### 34 TAC §3.586

The Comptroller of Public Accounts proposes amendments to §3.586, concerning margin: nexus, in response to the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

The comptroller adds titles to subsections and improves readability throughout the section.

The comptroller adds the word "Texas" in front of "franchise tax" throughout the section to maintain consistency.

The comptroller amends subsection (a) to allow effective dates in this section other than the effective date of January 1, 2008. Specifically, the amendment is in response to the decision in *Wayfair* affecting franchise tax reports due on or after January 1, 2020.

The comptroller adds new subsection (b) to provide that a foreign taxable entity is a taxable entity that is not chartered or organized in Texas. Subsequent subsections are relettered.

The comptroller amends relettered subsection (c) concerning nexus to provide that nexus is determined on an individual taxable entity level.

The comptroller amends relettered subsection (e) to provide that a foreign taxable entity with a Texas use tax permit is presumed to have nexus and is subject to Texas franchise tax. This presumption codifies existing practice. Information formerly in subsection (d) concerning exemptions for trade show participants is now in new subsection (h).

The *Wayfair* opinion held that constitutional nexus may result from substantial sales activity in a state even if an entity has no physical presence in a state. The opinion is incorporated into Texas law through Tax Code, §171.001(b), which provides that the franchise tax extends to the limits of the United States Constitution. To simplify tax administration for both the agency and taxpayers, subsection (f) proposes an economic nexus threshold of \$500,000 in annual Texas receipts for foreign taxable entities that do not have physical presence in the State. This threshold eliminates the need to determine on a case-by-case basis whether revenue-generating activities in the State constitute substantial nexus. The comptroller's office will apply this economic nexus provision beginning with reports due on or after January 1, 2020. Information formerly in subsection (e) concerning Public Law 86-272 is now in new subsection (i).

The comptroller adds new subsection (g) to identify the criteria for determining the beginning date when a foreign taxable entity begins doing business in this state.

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 updating the rule to clearly state comptroller interpretation of law and to provide clear guidance to taxpayers by eliminating the need to determine on a case-by-case basis

whether revenue-generating activities in the state constitute substantial nexus. 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 significant anticipated 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.

This amendment is in response to the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

§3.586. *Margin: Nexus.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, unless otherwise noted.

(b) Foreign taxable entity. A taxable entity that is not chartered or organized in Texas.

(c) ~~[(b)]~~ Nexus. A taxable entity is subject to Texas franchise tax ~~[in this state]~~ when it has sufficient contact with this state to be taxed without violating the United States Constitution. Nexus is determined on an individual taxable entity level.

(d) ~~[(e)]~~ Physical presence. Some specific activities that ~~[which]~~ subject a taxable entity to Texas franchise tax include, but are not limited to, the following:

(1) advertising: entering Texas to purchase, place, or display advertising when the advertising is for the benefit of another and in the ordinary course of business (e.g., the foreign taxable entity makes signs and brings them into Texas, sets them up, and maintains them);

(2) consignments: having consigned goods in Texas;

(3) contracting: performance of a contract in Texas regardless of whether the taxable entity brings its own employees into the state, hires local labor, or subcontracts with another;

(4) delivering: delivering into Texas items it has sold;

(5) employees or representatives: having employees or representatives in Texas doing the business of the taxable entity;

(6) federal enclaves: doing business in any area within Texas, even if the area is leased by, owned by, ceded to, or under the control of the federal government;

(7) franchisors: entering into one or more contracts with persons, corporations, or other business entities located in Texas, by which:

(A) the franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; and

(B) the operation of a franchisee's business pursuant to such plan is substantially associated with the franchisor's trademark,

service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

(8) holding companies: maintaining a place of business in Texas or managing, directing, and/or performing services in Texas for subsidiaries or investee entities;

(9) inventory: having an inventory in Texas or having spot inventory for the convenient delivery to customers, even if the bulk of orders are filled from out of state;

(10) leasing: leasing tangible personal property which is used in Texas;

(11) loan production activities: soliciting sales contracts or loans, gathering financial data, making credit checks, collecting accounts, repossessing property or performing other financial activities in Texas through employees, independent contractors, or agents, regardless of whether they reside in Texas;

(12) partners:

(A) acting as a general partner in a general partnership which is doing business in Texas;

(B) acting as a general partner in a limited partnership which is doing business in Texas (a foreign taxable entity which is a limited partner in a limited partnership is not doing business in Texas, if that is the limited partner's only connection with Texas);

(13) place of business: maintaining a place of business in Texas;

(14) processing: assembling, processing, manufacturing, or storing goods in Texas;

(15) real estate: holding, acquiring, leasing, or disposing of any property located in Texas;

(16) services, including, but not limited to the following:

(A) providing any service in Texas, regardless of whether the employees, independent contractors, agents, or other representatives performing the services reside in Texas;

(B) maintaining or repairing property located in Texas whether under warranty or by separate contract;

(C) installing, erecting, or modifying property in Texas;

(D) conducting training classes, seminars or lectures in Texas;

(E) providing any kind of technical assistance in Texas, including, but not limited to, engineering services; or

(F) investigating, handling or otherwise assisting in resolving customer complaints in Texas.

(17) shipment: sending materials to Texas to be stored awaiting orders for their shipment;

(18) shows and performances: the staging of or participating in shows, theatrical performances, sporting events, or other events within Texas;

(19) solicitation: having employees, independent contractors, agents, or other representatives in Texas, regardless of whether they reside in Texas, to promote or induce sales of the foreign taxable entity's goods or services;

(20) telephone listing: having a telephone number that is answered in Texas; or

(21) transportation:

(A) carrying passengers or freight (any personal property including oil and gas transmitted by pipeline) from one point in Texas to another point within the state, if pickup and delivery, regardless of origination or ultimate destination, occurs within Texas; or

(B) having facilities and/or employees, independent contractors, agents, or other representatives in Texas, regardless of whether they reside in Texas:

(i) for storage, delivery, or shipment of goods;

(ii) for servicing, maintaining, or repair of vehicles, trailers, containers, and other equipment;

(iii) for coordinating and directing the transportation of passengers or freight; or

(iv) for doing any other business of the taxable entity.

(e) Texas use tax permit. A foreign taxable entity with a Texas use tax permit is presumed to have nexus in Texas and is subject to Texas franchise tax.

(f) Economic nexus. For each federal income tax accounting period ending in 2019 or later, a foreign taxable entity has nexus in Texas and is subject to Texas franchise tax, even if it has no physical presence in Texas, if during that federal income tax accounting period, it had gross receipts from business done in Texas of \$500,000 or more, as determined under §3.591 of this title (relating to Margin: Apportionment).

(g) Beginning date. A foreign taxable entity begins doing business in the state on the earliest of:

(1) the date the entity has physical nexus as described in subsection (c) of this section;

(2) the date the entity obtains a Texas use tax permit; or

(3) the first day of the federal income tax accounting period in which the entity had gross receipts from business done in Texas in excess of \$500,000.

(h) [~~(d)~~]Trade shows. See §3.583 of this title (relating to Margin: Exemptions) for information concerning exemption for certain trade show participants under Tax Code, §171.084.

(i) [~~(e)~~] Public Law 86-272. Public Law 86-272 (15 United States Code §§381 - 384) does not apply to the Texas franchise tax.

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

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903313

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: October 27, 2019

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







# WITHDRAWN RULES

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

## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 44. BOVINE VIRAL DIARRHEA VIRUS

##### 4 TAC §44.1, §44.2

The Texas Animal Health Commission withdraws the proposed new §44.1, and §44.2, which appeared in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2811).

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903300  
Larissa Schmidt  
Chief of Staff  
Texas Animal Health Commission  
Effective date: September 16, 2019  
For further information, please call: (512) 719-0700



#### CHAPTER 45. REPORTABLE DISEASES

##### 4 TAC §45.2

The Texas Animal Health Commission withdraws the proposed amendment §45.2 which appeared in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2815).

Filed with the Office of the Secretary of State on September 16, 2019.

TRD-201903301  
Larissa Schmidt  
Chief of Staff  
Texas Animal Health Commission  
Effective date: September 16, 2019  
For further information, please call: (512) 719-0700



## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 16. HISTORIC SITES

##### 13 TAC §16.3

The Texas Historical Commission withdraws the proposed amended §16.3 which appeared in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2827).

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903251  
Mark Wolfe  
Executive Director  
Texas Historical Commission  
Effective date: September 13, 2019  
For further information, please call: (512) 463-7948



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

##### DIVISION 1. SALE OF SUBSTITUTES TO WORKERS' COMPENSATION INSURANCE

##### 28 TAC §5.6302

The Texas Department of Insurance withdraws the proposed repeal of §5.6302, which appeared in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4165).

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903272  
James Person  
General Counsel  
Texas Department of Insurance  
Effective date: September 13, 2019  
For further information, please call: (512) 676-6584



##### 28 TAC §5.6302

The Texas Department of Insurance withdraws proposed new §5.6302, which appeared in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4165).

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903271

James Person

General Counsel

Texas Department of Insurance

Effective date: September 13, 2019

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



**CHAPTER 34. STATE FIRE MARSHAL  
SUBCHAPTER F. FIRE ALARM RULES**

**28 TAC §34.622**

Proposed amended §34.622, published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1245), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on September 10, 2019.

TRD-201903193



**TITLE 34. PUBLIC FINANCE**

**PART 3. TEACHER RETIREMENT  
SYSTEM OF TEXAS**

**CHAPTER 51. GENERAL ADMINISTRATION**

**34 TAC §51.1**

Proposed amended §51.1, published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1274), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on September 10, 2019.

TRD-201903192



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 38. TRICHOMONIASIS

##### 4 TAC §§38.1 - 38.3, 38.6

The Texas Animal Health Commission (commission) adopts amendments to Chapter 38, §§38.1 - 38.3, and 38.6, concerning "Trichomoniasis". The amendments are adopted with changes to the proposed text as published in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2807). Based on comments received the commission voted at its August 13, 2019 meeting to remove the proposed addition of subsection (g) to §38.3 and to remove the proposed amendment of §38.6(2)(A). The adopted rules will be republished.

##### BACKGROUND AND JUSTIFICATION:

The Bovine Trichomoniasis (Trich) Working Group (TWG) had an annual review on April 23, 2019, to evaluate the effectiveness of current program. The TWG discussed the program overview to date, the management of infected herds, and the need for possible revisions to the program.

The group recommended three changes be made in the control program. The first was to ensure that samples pooled by approved laboratories were not authorized for official test purposes from Trich positive herds, herds identified as being adjacent to Trich positive herds and change of ownership. These need to be individually submitted samples so as to improve the quality of the test sample as well as to provide quicker identification for follow up on the positive animals.

The second recommendation was to limit the use of a virgin certificate as an exemption to the test requirements. The proposed rule provides that sexually intact male cattle under 18 months of age, or verified by birth date listed on the breed registry papers, must be certified by the breeder on a virgin certificate in order for the animal to be sold without a test. Therefore, it is proposed that the use of virgin certificates be restricted to breeder animals that belong to a breed registry which maintains an official list of animals within a specific breed for which there is an association of unique identification for the cattle.

The third recommendation was that a seller must provide written disclosure for female cattle that have been exposed or potentially exposed to a Trich positive bull within the previous 6 months at the time of sale. There is not any easy diagnostic method to disclose female cattle that are positive with Trich. This provision will allow a buyer of female cattle to take this information into account for managing the newly purchased females for breeding purposes.

##### HOW THE SECTION WILL FUNCTION:

The adopted amendments to 38.1, relating to Definitions, add a definition of Registered Breeding Cattle, and modify the definition of Virgin Bull.

The adopted amendments to 38.2, relating General Requirements, limit the use of breeder issued virgin certificates to bulls that belong to a breed registry that maintains an official list of animals within a specific breed and their associated unique identification.

##### SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The 30-day comment period ended July 8, 2019.

During this period, TAHC received comments regarding the rules from Livestock Marketing Association of Texas and ten individuals. A summary of comments relating to the rules and TAHC's responses follows:

Comment: In regards to 38.6(2)(A) four commenters believe that the disallowance of the pooling of samples will create an unnecessary financial burden on producers and lead to more bulls being sold via private treaty without any veterinary or regulatory involvement.

Response: TAHC accepts this comment and has removed this amendment from the rule as previously published.

Comment: Two commenters were concerned that the age of testing bull calves is being lowered.

Response: TAHC appreciates the concerns of the commenters, however, this is not the case. The testing age remains unchanged. All Texas origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in the State of Texas must be tested negative within 60 days before change in possession, unless accompanied by a certificate of virgin status.

Comment: In regards to 38.3(g), Livestock Marketing Association of Texas respectfully requested that TAHC consider disclosure of female cattle separate from the other proposed amendments and refer the proposal back to the TAHC Trich Working Group for further analysis and discussion.

Response: TAHC accepts this comment and has removed this amendment from the rule as previously published.

Comment: In regards to 38.3(g), one individual has asked TAHC to define potentially exposed.

Response: TAHC appreciates this comment, and because this section of the proposed rule has been removed from the amendment as previously published, we will take it under advisement for future rulemaking if necessary.

Comment: One individual commented that all bulls sold at a sale barn should be tested, not just those purchased under a hold order.

Response: While TAHC agrees that the program would be easier to administer if all bulls sold were required to be tested, the agency takes into consideration that the program is designed to control Trichomoniasis in a manner supported by the cattle industry as a whole. The input TAHC received from the Trichomoniasis Working Group in previous years was in support of allowing untested bulls to be sold for subsequent testing, or for feeding for slaughter in approved facilities.

Comment: One individual commented that the adopted changes to this chapter are needed.

Response: TAHC respectfully agrees.

#### STATUTORY AUTHORITY

The amendments 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 §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

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

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

#### §38.3. *Infected Herds.*

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the commission. Breeding bulls which have been disclosed as reactors may be retested provided: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the TVMDL for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are retested, they must have two negative tests by RT-PCR to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a movement permit authorized by the commission from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the commission.

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d) of this section. All bulls remaining in the herd from which an infected bull(s) has been identified must be tested two more times by culture

or one more time by RT-PCR test. Any bull positive on the second or third test shall be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests shall be classified as negative and could be released for breeding.

(d) Breeding bulls that are part of a quarantined herd or a herd that is under a hold order and tests negative to the first official Trichomoniasis test may be maintained with the herd if the owner or caretaker of the bulls develops a Trichomoniasis herd control plan with a certified veterinarian. The Trichomoniasis herd control plan shall require all breeding bulls to be tested annually with an official Trichomoniasis test and include other best management practices to control, eliminate and prevent the spread of Trichomoniasis. The Trichomoniasis herd control plan, unless otherwise approved or disapproved by the commission, expires three years from the date the plan is signed by the herd owner or caretaker and the authorized veterinarian. Breeding bulls that are part of a Trichomoniasis herd control plan that expires or that is disapproved must be tested for Trichomoniasis as required by subsection (c) of this section.

(e) When Trichomoniasis is diagnosed in female cattle or fetal tissue, all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this section.

(f) If male or female cattle are found to be infected with Trichomoniasis, then bulls that are located or were located on property adjacent to the infected animal within 30 days from the date the infected animal was removed from such property shall be officially tested for Trichomoniasis. Such bulls shall be tested within a timeframe as determined by the commission. The commission shall provide written notification to the owner or caretaker of the bulls specifying the timeframe in which the bulls must be tested. The commission may waive this testing requirement if it is epidemiologically determined by the commission that testing is not required.

#### §38.6. *Official Trichomoniasis Tests.*

Approved Tests. Approved tests for Trichomoniasis testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample, collected in an InPouch, is received in the official laboratory, in good condition, within 48 hours of collection or is incubated in an InPouch by the collecting veterinarian for 48 hours after collection, and such sample is submitted to be tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than 48 hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and meets the following requirements:

(A) A Trichomoniasis sample submitted in an InPouch must be received in the official laboratory, in good condition, within 48 hours of collection or incubated by the collecting veterinarian for 48 hours after collection and submitted to arrive at the laboratory within 96 hours of collection. Trichomoniasis samples pooled at the laboratory may qualify as official tests at a ratio of up to five individually collected samples pooled for one test. Veterinary practitioners may not submit pooled samples for an official test.

(B) A Trichomoniasis sample submitted in phosphate buffered saline must be received in the official laboratory, in good condition, within 96 hours of collection.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

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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Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

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## CHAPTER 49. EQUINE

### 4 TAC §49.1

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 49, entitled "Equine" The amendment is for §49.1, concerning Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine, without changes to the text as published in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2817). The rules will not be republished.

The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine.

#### BACKGROUND AND JUSTIFICATION:

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine. This amendment provides that for an official equine passport the official identification includes a microchip.

#### HOW THE SECTION WILL FUNCTION:

The adopted amendments to §49.1, concerning Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine add unique and permanent forms of identification, such as electronic identification injected into the equine and digital photographs sufficient to identify the individual equine.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The 30-day comment period ended July 8, 2019.

During this period, TAHC received comments regarding the rules from Farm and Ranch Freedom Alliance and four individuals. A summary of comments relating to the rules and TAHC's responses follows:

Comment: In regards to §49.1(c) Farm and Ranch Freedom Alliance believes the language of the proposed rule could be interpreted as a requirement for electronic identification in addition to the currently required physical description of the horse on the Coggins certificate and if it is the agency's intention to make this an alternative option, then the rule should contain an "or" rather than an "and" preceding the new language.

Response: TAHC respectfully disagrees with the commenter. The language adds electronic identification injected into the equine to the list of items to identify the equine but the language also gives the final additional option of digital photographs sufficient to identify the individual equine.

Comment: One individual commented that the electronic ID and photograph requirements are unfair both to veterinarians with small equine practices and horse owners with one or two animals and that the cost of these services is out of reach for many and certainly not necessary.

Response: TAHC understands the individual's concerns and wants to clarify that electronic identification and digital photographs are included as additional options for officially identifying equids, but the use of one or both of the two new options is not a requirement. The current use of hand drawn identification markings will still be acceptable.

Comment: One individual submitted comments that concern rescue facilities and adjacent owners acquiring equine without coggins tests and that the rule appears to be silent in regards to this.

Response: TAHC did not consider this comment as it was outside the scope of the proposed amendments.

Comment: One individual submitted comments in favor of the microchip requirements but stated there needs to be a way to update microchip information at each sale and change of ownership.

Response: An implanted microchip encoded with an official Animal Identification Number can provide unique lifetime identification of an animal. While the microchip is initially assigned to a person for traceability purposes, the microchip is associated with the horse once it is implanted. When the microchip is read and the number recorded on the EIA test document, the completed test document links the horse to the owner at the time of the test. Even if the horse is sold multiple times, this system links the horse to the owner at the time of the most recent test, and allows trace back to previous owners when deemed necessary for an epidemiological investigation.

Comment: One individual submitted a comment in opposition to tagging and microchipping equine.

Response: TAHC respectfully recognizes there are differing views on the use of tags and microchips. Tags and other unique identifiers help make it possible to trace animals to the herd of origin quickly and accurately. Time is of the essence when dealing with many disease situations. Being able to trace animals quickly is paramount to accomplishing TAHC's core mission of protecting the health and marketability of Texas livestock.

#### STATUTORY AUTHORITY

The amendments 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 §161.054, and entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce."

Pursuant to §161.048, and entitled "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, and entitled "Commission Written Instruments", "[t]he Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission."

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases."

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

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases."

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country."

Pursuant to §161.112, entitled "Rules", "[t]he 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."

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by

an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission."

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market."

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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Larissa Schmidt  
Chief of Staff

Texas Animal Health Commission

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For further information, please call: (512) 719-0700



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.13

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 51, §51.13, concerning Entry Requirements. The commission published the proposal for comment in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2821). The amendments are adopted without changes and will not be republished.

#### REASONED JUSTIFICATION:

The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine moving on an equine passport.

#### BACKGROUND:

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine.

#### HOW THE SECTION WILL FUNCTION:

This amendment provides that for an official equine passport the current official identification is expanded to include a microchip or digital photographs which sufficiently identify the individual equine.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The Commission did not receive any comments and there will be no changes to the proposal.

## STATUTORY AUTHORITY

The amendments 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 §161.054, entitled "Regulation of Movement of Animals", "(t)he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", "(t)he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.005, and entitled, "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "(t)he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

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

Pursuant to §161.049, entitled "Dealer Records", "(t)he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "(i)f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", "(t)he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

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.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock" "(i)if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", "(a)n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market".

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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Larissa Schmidt

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## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 22. PROCEDURAL RULES SUBCHAPTER B. THE ORGANIZATION OF THE COMMISSION

##### 16 TAC §22.23

The Public Utility Commission of Texas (commission) adopts new 16 TAC §22.23, relating to delegation of authority to request representation by the attorney general with changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1954); therefore, the rule will be republished. The rule clarifies the commission's procedural rules by establishing a delegation mechanism to confer authority to request representation of the commission by the attorney general. This new section is adopted under Project Number 48827.

The commission did not receive comments on the proposed new section.

This new section is adopted under §§14.002 and 14.052 of the Public Utility Regulatory Act, Tex. Util. Code Ann. which provide the commission with the authority to make and enforce rules rea-

sonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

§22.23. *Delegation of Authority to Request Representation by the Attorney General.*

(a) The commission delegates to the chairman the authority to request representation by the attorney general for any purpose authorized by law.

(b) In the event the chairman is unavailable, the commission delegates the authority granted in subsection (a) of this section to any other commissioner. If no commissioner is available, the commission delegates the authority granted in subsection (a) of this section to the executive director or his authorized representative.

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

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Andrea Gonzalez

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## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

### 16 TAC §26.409

The Public Utility Commission of Texas (commission) adopts new rule 16 Texas Administrative Code (TAC) §26.409, relating to the review of Texas Universal Service Fund (TUSF) support received by competitive Eligible Telecommunications Providers (ETPs), with changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3209). The new rule establishes the criteria and process for determining whether TUSF support should be eliminated under the provisions of Public Utility Regulatory Act (PURA) §56.023(p) and (r). This amendment is adopted under Project Number 47668. In adopting this new rule, the commission makes other minor modifications to subsections (e) and (j) for the purpose of clarifying its intent.

The commission received comments on the new rule from AMA TechTel Communications (AMA) and Virgin Mobile USA, L.P. (Virgin Mobile). No party requested a hearing.

#### General Comments

AMA stated that the costs associated with the rule are minimal but could be further reduced if the commission reviewed the 50% triggered exchanges only once every three years.



## Commission Response

The commission understands AMA's concern about the costs of administering the new rule. However, the commission declines to adopt AMA's proposal to limit review of the triggered exchanges to once every three years. PURA §56.023(r) requires the commission to review the per-line support amount at least every three years, but allows the commission the latitude to do so more frequently. Commission resources will not be unduly strained by an annual review of exchanges as described in the new rule. In addition, more frequent review could benefit the state by reducing continuation of support that is not in the public interest.

Virgin Mobile acknowledged that nothing in the proposed rule states that a competitive ETP providing Lifeline service to customers located in exchanges subject to review under the proposed rule will be subject to potential elimination of Lifeline support. Nevertheless, Virgin Mobile expressed concern that unless the rule is clarified, Lifeline support could be eliminated for Lifeline-only ETPs such as itself under the new rule. Virgin Mobile recommended language to clarify that this rule does not apply to loss of Lifeline support. Virgin Mobile explained that its concern is caused by commission staff's position in a pending contested case, Docket No. 48502, *Application of Virgin Mobile USA, L.P. to Amend its Designation as an Eligible Telecommunications Carrier and its Designation as an Eligible Telecommunications Provider for the Limited Purpose of Offering Lifeline Service*, that the Lifeline program is not a distinct program within the TUSF, but is a subset of the two high cost funds.

## Commission Response

The commission agrees with Virgin Mobile that Lifeline support is not contemplated in PURA §56.023(p) and (r) and is not under consideration in this rule. The rule is clear on this point and additional clarification is unnecessary.

AMA had concerns about the confidentiality of the number of access lines it serves in a market. AMA argued that the number of access lines that paragraph (d)(1)(A) would require commission staff to report is only relevant for staff's identification of exchanges to be reported under paragraph (d)(1)(B). Therefore, AMA continued that paragraph (d)(1)(A) be eliminated to address these concerns. AMA asserted that the data is subject to Texas law as a trade secret and that the commission typically treats the number of access lines a company serves as proprietary and confidential information and should report this information confidentially.

## Commission Response

It is not the commission's intent to expose the number of lines served by individual competitive ETPs. The commission has reorganized section (d)(1)(A) to address AMA's concerns. Filings made under a claim of confidentiality and submitted in accordance with TAC 16 §22.71 will be treated in accordance with the commission's rules and procedures for handling confidential information.

AMA recommended a response period of 30 days for a competitive ETP to respond to commission staff's application, instead of the proposed 20 days in subsection (f)(1). Similarly, AMA recommended a response period of 20 days for a competitive ETP to respond to commission staff's recommendation, instead of the proposed 10 days in subsection (h). AMA stated that a longer period to develop responses would reduce the likelihood of any affected carrier requesting a hearing, thus reducing administrative

costs. AMA also stated that additional time is needed because commission staff's application and recommendation would affect all competitive ETPs serving a specific exchange and that these competitors would have no knowledge of the aggregate reduction in the number of access lines until commission staff has filed its application. AMA indicated that the rule should allow sufficient time for affected carriers to execute necessary nondisclosure agreements or protective orders, evaluate data, and deliver a thoughtful and useful response.

## Commission Response

The commission agrees to lengthen the response period to not more than 30 days in subsection (f)(1) and not more than 20 days in subsection (h). To maintain comparable response periods, the commission also increases the time in subsection (g) by which commission staff must file a recommendation to not more than 40 days.

This amendment is adopted under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and PURA §56.023(r), which directs the commission to adopt rules to establish the criteria to determine whether the TUSF support for certain competitive ETPs should be eliminated.

Cross reference to statutes: PURA §§ 14.002 and 56.023.

*§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.*

(a) Purpose. This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under 16 TAC §26.403 to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.

(b) Application. This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under 16 TAC §26.403.

(c) Commission review.

(1) The commission must review the per-line TUSF support amount for each exchange identified by subsection (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subsection (d)(1)(B) of this section.

(2) The commission must base its decision on the following criteria:

(A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;

(B) The number of competitors providing comparable service in the exchange; and

(C) Whether continuing the TUSF support is in the public interest.

(d) Identification of exchanges for review.

(1) No later than April 30 of each year, commission staff must report:

(A) The exchanges in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016; and

(B) The number of access lines served by those competitive ETPs identified in subparagraph (A) of this paragraph on December 31 of the previous year.

(2) Commission staff must file its report in central records under a control number designated for that purpose.

(e) Initiation of proceeding. For each exchange identified under subsection (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.

(1) The application must be supported by an affidavit and describe commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.

(2) Commission staff must serve a copy of the application, at the time of filing, to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.

(f) Competitive ETP's response to commission staff's application.

(1) A competitive ETP serving access lines in an exchange identified under subsection (d)(1)(B) may respond to commission staff's application no later than 30 days after the application is filed.

(2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.

(3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71.

(g) Commission staff's recommendation. In accordance with the schedule established by the presiding officer, but no earlier than 40 days after filing the application described in subsection (e) of this section, commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c) of this section.

(h) Competitive ETP's response to commission staff's recommendation. No later than 20 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.

(i) Commission determination.

(1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h) of this section, the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.

(2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.

(j) Further review. If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) - (i) of this section, the commission must repeat the review of the TUSF per-line support amount for that exchange at least every three years.

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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Public Utility Commission of Texas  
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For further information, please call: (512) 936-7244

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**TITLE 22. EXAMINING BOARDS**

**PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

**CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS**

**22 TAC §72.19**

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.19 (Fees) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3498). The rule will not be republished.

The Board will adopt a new §72.19 in a separate rulemaking action. The purpose of the Board's repeal and replacement of the rule is to remove fees related to registering radiologic technologists as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session) and to raise the two late renewal fees (by \$15 and \$30, respectively) to make them conform to Occupations Code §201.354(d)

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the repeal of this 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.

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903229  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
Effective date: November 1, 2019  
Proposal publication date: July 12, 2019  
For further information, please call: (512) 305-6700

◆ ◆ ◆  
**22 TAC §72.19**

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.19 (Fees) with no changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3499). The rule will not be republished.

The Board will adopt the repeal of the current §72.19 in a separate rulemaking action. The purpose of the Board's repeal and replacement of the rule is to remove fees related to registering radiologic technologists as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session) and to raise the two late renewal fees (by \$15 and \$30, respectively) to make them conform to Occupations Code §201.354(d)

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted new 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## CHAPTER 75. BUSINESS PRACTICES

### 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §75.2 (Out-of-Facility Practice) without changes as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3500). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §75.2 (Place of Business) in a separate rulemaking action. The new rule removes references to chiropractic facilities and clarifies what information a licensee must maintain about locations where services are provided.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic. No other statutes or rules are affected by this repeal.

No other statutes or rules are affected by this 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



### 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.2 (Place of Business) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3501). The rule will not be republished. The Board is repealing the current rule (Out-of-Facility Practice) in a separate rulemaking action.

The rule removes references to chiropractic facilities, over which the Board no longer has any jurisdiction following passage of the Board's Sunset bill (Senate Bill 304) in the 85th Regular Legislative Session. The rule clarifies what information a licensee must maintain about locations where services are provided, including those provided at a licensee's residence or by a licensee operating a mobile-only practice. Under the rule, a licensee must keep the required location information for six years.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



### 22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §75.6 (Mandatory Notice to Public) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3502). The rule will not be republished.

The Board is adopting a new §75.6 in a separate rulemaking action. The replacement rule updates language for clarity. It also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The replacement rule removes language about a licensee's obligation to display a chiropractic license; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License).

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.6 (Mandatory Notice to Public) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3503). The rule will not be republished.

The new rule updates language for clarity. The new rule also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The new rule removes language about a licensee's obligation to display a chiropractic license; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License). The Board is repealing the current rule in a separate rulemaking action.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.7 (Mandatory Display of License) with no changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3503). The rule will not be republished.

The purpose is to move and update existing language from 22 TAC §75.6 (Mandatory Notice to Public) about a licensee's obligation to prominently display a current chiropractic license into a stand-alone rule. The new rule will make it easier for licensees and the public to find the information.

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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.

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903230

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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Proposal publication date: July 12, 2019

For further information, please call: (512) 305-6700



## 22 TAC §75.8

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.8 (Unsafe and Unsanitary Conditions) with no changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3504). The rule will not be republished.

The purpose of the new rule is to establish basic sanitary and safety standards for locations where chiropractic is practiced. This rule-making is also in response to a recommendation made by the Texas Sunset Commission as part of its review of agency policies, procedures, and operations.

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this adoption.

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

Filed with the Office of the Secretary of State on September 13, 2019.

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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## CHAPTER 79. UNPROFESSIONAL CONDUCT

### 22 TAC §79.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §79.3 (Disciplinary Records) as published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2694). The rule will not be republished.

The Board has determined that the rule exceeds the Board's statutory authority to remove or expunge the records of final disciplinary actions taken by the Board.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

The adopted repeal does not affect any other statutes or 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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TRD-201903233  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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Proposal publication date: May 31, 2019  
For further information, please call: (512) 305-6700



## CHAPTER 80. COMPLAINTS

### 22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.1 (Duty to Respond to Complaint) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3505). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.1 in a separate rulemaking action. The new rule removes references to chiropractic facilities and makes the rule more readable.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



### 22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.1 (Duty to Respond to Complaint) without changes as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3505). The rule will not be republished.

The Board is repealing the current rule in a separate rulemaking action. The new rule is intended to remove previous references to chiropractic facilities, over which the Board no longer has jurisdiction following passage of the Board's Sunset bill (Senate Bill 304) in the 85th Regular Legislative Session. The new rule also removes unnecessary language and makes it more readable.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



### 22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.3 (Disciplinary Guidelines) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3508). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.3 in a separate rulemaking action. The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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TRD-201903264

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.3 (Disciplinary Guidelines) with one non-substantive change as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3509). The rule will be republished.

The adopted rule adds language to subsection (e)(2) that clarifies when a licensee under suspension may communicate with patients. The Board is repealing the current rule in a separate rulemaking action. The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language to make it more readable.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted rule.

### §80.3. *Disciplinary Guidelines.*

(a) The Board may take disciplinary action against a licensee or other person who violates a statute or rule under the Board's jurisdiction.

(b) The Board's disciplinary actions shall consider the seriousness of the violation, any harm to a patient, the circumstances of the licensee, and the Board's duty to protect the public.

(c) Disciplinary action may include one or more of the following:

- (1) revocation of license;
- (2) suspension of license;
- (3) suspension with probation;
- (4) written formal reprimand;
- (5) administrative penalty;
- (6) repeat taking of the jurisprudence exam; and

(7) additional continuing education.

(d) The Board may impose additional conditions or restrictions to aid a licensee's rehabilitation and education, including:

(1) completion of specific continuing education beyond the minimum required of all licensees;

(2) passing a specific examination;

(3) restrictions on the type of treatment, treatment procedures, or class of patients to be treated;

(4) restrictions on the supervision of others; or

(5) undergoing a psychological or medical evaluation and undergoing any recommended treatment.

(e) During a suspension, a licensee may not:

(1) receive any remuneration from the practice of chiropractic;

(2) communicate with any patients other than to ensure continuation of care;

(3) provide any chiropractic services to any person; or

(4) be present at any location where chiropractic services are provided.

(f) The Board shall memorialize all final disciplinary actions in a Board order.

(g) All Board final disciplinary actions are public record unless otherwise exempted by law.

(h) The Board shall publish final disciplinary actions.

(i) The Board shall transmit all final disciplinary actions involving criminal acts, physical or economic harm to patients, or serious violations of statute or rule to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.

(j) To the extent allowed by law, the Board shall only transmit final disciplinary actions that involve criminal acts, physical or economic harm to patients, or serious violations of statute or rule.

(k) The Board shall consider reinstating a license that has been finally revoked for more than a year.

(l) The Board may deny reinstatement of a revoked license or grant reinstatement with or without conditions.

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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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.5 (Expert Review Process) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3510). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.5 in a separate rulemaking action. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee. The new rule also makes non-substantive changes for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.5 (Expert Review Process) with non-substantive changes as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3511). The rule will be republished.

The Board has added language to clarify that the Board may select professionals in other disciplines to provide an expert review during an investigation. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee. The new rule also makes non-substantive changes for clarity. The Board is repealing the current rule in a separate rulemaking action.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted rule.

### §80.5. *Expert Review Process.*

(a) During the investigation of a complaint, the Board may require expert review of a licensee's standard of patient care or billing practices.

(b) To qualify as an expert, a person shall:

- (1) have an active license with the Board or appropriate professional credentials;
  - (2) have no prior violations of Board statutes or rules;
  - (3) have no open complaints;
  - (4) have no felony convictions or no misdemeanor convictions for a crime of moral turpitude;
  - (5) show sufficient training or experience to offer an expert opinion;
  - (6) show knowledge of accepted standards of chiropractic care or other professional standard related to the alleged violation; and
  - (7) have an acceptable malpractice complaint history.
- (c) An expert may not review a complaint if the expert has:
- (1) a direct financial interest or relationship with any party or witness to the complaint that gives the appearance of a conflict of interest;
  - (2) a familial relationship within the third degree of affinity with any party or witness;
  - (3) personal knowledge of any information about any party or witness related to the complaint; or
  - (4) any other reason where the expert could not fairly and impartially consider the complaint.
- (d) The Board shall maintain a list of experts and shall periodically audit the list to confirm the experts' qualifications.
- (e) Board staff shall select an expert when an investigator identifies a standard of care or other professional standard in the complaint.
- (f) Board staff shall randomly select an expert from the list and based on the expert's qualifications to review the type of complaint.
- (g) The executive director shall remove an expert from the list for:
- (1) failure to maintain the required qualifications;
  - (2) failure to timely complete reports;
  - (3) failure to inform the Board of potential or apparent conflicts of interest; or
  - (4) failure to maintain confidentiality of any matter.
- (h) The Board shall provide to the expert:
- (1) the complaint;
  - (2) the investigator's report;
  - (3) the Board's expert report form; and
  - (4) a contract for services.
- (i) The expert shall review all relevant information to determine if a licensee violated the applicable standard of care or other professional standard and prepare a written report.
- (j) The expert's report shall include:
- (1) the expert's qualifications;
  - (2) the relevant facts of the complaint;
  - (3) the applicable standard of care or other professional standard;
  - (4) an application of the standard of care or professional standard to the facts;

(5) a finding of whether the standard of care or professional standard was met; and

(6) the clinical basis for the findings, including the use of any peer-reviewed journals, studies, or reports.

(k) The expert shall complete and return the review within 30 days, unless the expert requests more time due to the complaint's complexity.

(l) The Board shall give the expert's report to the licensee within 30 days of receipt.

(m) The Enforcement Committee shall review the report and the licensee's response in determining if a violation occurred.

(n) The Enforcement Committee may order additional expert reviews if necessary.

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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §80.6

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.6 (Undercover Investigations) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3512). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.6 in a separate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §80.7

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.7 (Cease and Desist Orders) as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3513). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.7 in a separate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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TRD-201903262  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §80.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.7 (Cease and Desist Orders), without changes to the text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3514). The rule will not be republished.

The adopted rule makes non-substantive changes to the text for clarity.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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TRD-201903263



Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §80.9

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.9 (Temporary License Suspension) with non-substantive changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3515). The rule will be republished.

The rule transfers existing language concerning the Board's emergency license suspension procedures (authorized by Occupations Code §201.507) from 22 TAC §80.2 (Complaint Procedures) into a new stand-alone rule. The new rule retains the basic procedures currently in §80.2 and removes superfluous language for clarity. The new rule also makes clear the only purpose of the 14-day hearing is to determine whether there are reasonable grounds for the temporary suspension to remain in effect.

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this adoption.

### §80.9. *Temporary License Suspension.*

(a) The Enforcement Committee may temporarily suspend a license if the committee reasonably believes a licensee is a continuing or imminent threat to the public.

(b) The Board delegates authority to the executive director to sign temporary suspension orders on behalf of the Enforcement Committee after the committee votes to suspend a license.

(c) The Enforcement Committee may dissolve a previously-issued temporary suspension order at any time.

(d) A temporary suspension may occur without notice if a hearing on the suspension is scheduled at the State Office of Administrative Hearings (SOAH) not later than the 14th day after the date of suspension.

(e) At the 14-day hearing, the only issue is whether the temporary suspension should remain in effect.

(f) If the SOAH administrative law judge (ALJ) finds the Board has reasonable information that the licensee is a continuing or imminent threat to the public, the ALJ shall issue an order to keep the temporary suspension in effect pending the initiation of disciplinary proceedings against the licensee.

(g) A second hearing on the suspension shall be held not later than the 60th day after the date the suspension was ordered.

(h) The 60-day hearing shall determine only whether the suspension shall remain in effect pending the final determination of disciplinary proceedings against the licensee.

(i) If the 60-day hearing is not timely held, the suspension is dissolved.

(j) A temporary suspension shall automatically dissolve on the 61st day after the date the suspension was ordered if the Board has not served a notice of hearing for disciplinary action against the licensee for acts that were the basis for the suspension.

(k) The Board shall notify a licensee of a suspension by certified mail, regular mail, and email.

(l) A licensee may waive the 14-day or 60-day hearings.

(m) A licensee may not practice chiropractic during a temporary suspension.

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 10. TEXAS FUNERAL SERVICE COMMISSION

### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

#### SUBCHAPTER A. LICENSING

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter A - Licensing, specifically Rules §203.1 - Funeral Director and Embalmer License Requirements and Procedure; §203.3 - Retired/Disabled License; §203.4 - Reciprocal License; §203.5 - Provisional License; §203.8 - Continuing Education; §203.9 - Licensure of Funeral Establishments and Commercial Embalming Establishments; and §203.11 - Establishment Names and Licensing and repeals Rule §203.14 - State Agency Action as a Basis for License Suspension, Revocation or Denial. The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3760) and will be republished. The repeal of §203.14 is adopted without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3760) and will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments/repeal to Chapter 203, Subchapter A are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

The amendments to Rule §203.1, Funeral Director and Embalmer License Requirements and Procedure, clarify that a licensee can renew a license up to 60 days prior to his/her expiration date and provide that the Executive Director can waive licensing requirements for certain military applicants under Tex. Occ. Code Chapter 55.

The amendments to Rule §203.3 remove language requiring certain applicants to take continuing education to conform to Rule §203.8 and provide in rule that the fee for these licenses is one-half the amount of an active license.

The amendments to Rule §203.4, conform the rule to amendments to Tex. Occ. Code 651.259 related to how and why the agency reviews criminal histories of out-of-state applicants and conforms the review to Rule §203.8. Additionally, the changes provide that the Executive Director can waive licensing requirements for certain military reciprocal applicants under Tex. Occ. Code Chapter 55.

The amendments to Rule §203.5, Provisional License, clarify how a person who is no longer officially enrolled in school, but not yet a certified graduate can continue to hold a license. The changes clarify that a licensee who entered the provisional program on an education waiver would only get additional months added to the 24-month maximum term for those months he/she was not enrolled in classes. The changes clarify an applicant only has to take the applicable examinations required by law based on the type of license being sought, and clarify persons who submit to a criminal background check but who fail to submit an application within 6 months may be required to re-submit to a subsequent criminal background check.

The amendments to Rule §203.8: (1) allow the Commission to accept continuing education courses approved by the Academy of Professional Funeral Service Providers in lieu of agency review and approval, as the Academy has more expertise in course approval (the Academy does not offer continuing education but approves more than 3,500 hours of continuing education programs each year as part of the Certified Funeral Service Practitioner (CFSP) program); (2) provide the certificate of attendance must include whether the course was online or in person; (3) require all active licensees to take 16 hours of continuing education regardless of where they practice; (4) exempt persons in retired or disabled status from continuing education; (5) remove language stating it is the licensee's responsibility to track continuing education hours; (6) update mandatory continuing education on the law of funeral directing to include content on Health & Safety Code Chapter 716; (7) remove content related to Health & Safety Code Chapter 715 from mandatory Vital Statistics continuing education; (8) require four of the 16 required continuing education hours to be taken in person; (9) remove the use of college courses as continuing education; (10) clarify instructors of continuing education may earn two hours of continuing education per course; (11) provide licensees who supervise provisional licensees may earn 8 hours of continuing education, up from 4; (12) remove language allowing licensees not practicing in the state to complete only the mandatory continuing education; (13) remove language requiring retired, active/disabled, active licensees to take 10 hours of continuing education; (14) eliminate the ability to carry-over continuing education hours from one renewal period to another; (15) remove authority to pay non-compliance fee instead of taking continuing education; and (16) renumber language regarding continuing education requirements for military licensees without making any substantive changes.

Rule §203.9, Licensure of Funeral Establishments and Commercial Embalming Establishments - The changes require forms submitted during the establishment application process to have a placeholder to insert license number (when issued); and authorize the agency to cancel an establishment license if the renewal is not received within 90 days after the expiration date. The amendment also requires a new funeral establishment applicant to have paid all outstanding penalties, including all payments under a payment plan, before a new license will be issued.

Rule §203.11, Establishment Names and Licensing - The changes require an establishment to include the establishment's license number on the establishment's website's contact page and removes references to cemeteries from the rule as the Commission no longer has authority to regulate cemeteries.

Rule §203.14, State Agency Action as a Basis for License Suspension, Revocation or Denial - The rule is repealed as the agency has determined it cannot take action under the rule until the agency first takes action under its enforcement process.

**PUBLIC COMMENTS:** Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendments of this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. Several comments were received regarding the proposed amendments.

**SUMMARY OF COMMENTS:**

**Comment:** Licensed funeral director and embalmer Billy C. Valie (License #7271) expressed support for the proposed amendments.

**Commission Response:** Agree.

**Comment:** Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification regarding the Commission's use of the Academy of Professional Funeral Service Providers (APFSP) to review courses under Rule §203.8(c)(6) and the requirement that each course submitted include a fee payable to the Commission. He wondered if the APFSP approval meant a provider would not also have to pay the course fee to the Commission.

**Commission Response:** No continuing education provider is required to have a course approved by the APFSP for the course to be accepted by the Commission. A continuing education provider who chooses to submit for Commission approval a course already approved by the APFSP would still have to submit the required Commission course fee.

**Comment:** Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification regarding the Commission's use of the APFSP to review courses under Rule §203.8(c)(6) and the that requirement every course approved by the Commission be issued a course number. He questioned what information would need to be included on the course certificate.

**Commission Response:** As outlined in §203.8(d), every course attendance certificate issued to a Texas licensed funeral director or embalmer and used to satisfy Commission continuing education requirements must include both the Texas-issued provider number and course number. The Commission will amend the rule to specifically state the certificate must include the Commission-issued course and provider numbers.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions questioned the limit of two-hours per course under Rule §203.8(g) stating many courses approved by the APFSP may be longer than two-hours.

Commission Response: Agree. The Commission will remove the two-hour maximum language from the adoption language to ensure its licensees will get hour-for-hour credit for all courses approved by the Commission, no matter the length.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification of the language in Rules §203.8(e)(1) and §203.8(e)(2) on which licensees are required to take continuing education.

Commission Response: While §203.8(e)(1) states all licenses who actively practice must take 16 hours of continuing education, §203.8(e)(2) and §203.8(e)(3) exempt certain licensees (retired, disabled, military) from taking continuing education. Therefore, only active licensees who are not retired, disabled, or military must take continuing education.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification of when the amendments to §203.8 would take effect.

Commission Response: As the Commission's continuing education program expires annually, the changes for provider and course approval would take effect with next renewal period (January 1, 2020 - December 31, 2020). For licensees, the Commission recognizes licensees who expire within the next few months may have already completed continuing education requirements, without complying with the in-person requirements. Additionally, the Commission recognizes that providers will need time to develop in-person continuing education. As such, the Commission will amend the rule to state the requirement for four hours of in-person continuing education will apply beginning with the June 30, 2020 renewals.

Comment: Ken Whittaker, Whittaker Funeral Support Services stated he was in agreement with the suggestion to temporarily remove Vital Statistics as a required continuing education subject given the Bureau of Vital Statistics has been having difficulties with the death certificate process and it is unfair for licensees to have to get vital statistic information that is not helpful or useable.

Commission Response: Disagree. The proposed changes to §203.8(f) do not eliminate vital statistics as a required continuing education course. The Commission believes all licensees should keep up to date on Vital Statistics laws and agency operations. However, the Commission will be sure to thoroughly review any future course submitted by the Bureau of Vital Statistics prior to authorizing its use.

CHANGES TO PUBLISHED TEXT: The adopted rules contain the following changes from the rules as published in the July 26, 2019, issue of the *Texas Register*:

§203.8(d)(1)(c) is changed as result of a comment seeking clarification of what must be included on a continuing education certificate. The language is amended to include "Commission-issued" course or program number. The new language reads: "(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain: (C) the title of the course or program, including both the Commission-issued course and program number;"

§203.8(e)(1) is changed as a result of a printing error in the *Texas Register*. The text as adopted by the Commission reads "(1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every-two-year renewal period. A licensee may receive credit for a course only once during a renewal period." The *Texas Register* omitted the strike though of "in this state."

§203.8(g) is changed as a result of a comment questioning the two-hour maximum per course. The language is amended to read: "(g) Of the 16 hours of continuing education, four hours must be taken in-person. The remaining 12 hours may be taken through Internet/online presentation." which strikes the language "with a maximum of two-hours per course."

§203.8(g) is changed as a result of a comment questioning when the in-person requirement will take effect. The language is amended by adding the sentence: "This requirement for in-person continuing education will apply beginning with the June 30, 2020 renewals."

## 22 TAC §§203.1, 203.3 - 203.5, 203.8, 203.9, 203.11

STATUTORY AUTHORITY: This adoption is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; (2) Texas Occupations Code §651.165 which authorizes the Commission to renew licenses; (3) Texas Occupations Code §§651.255-651.256 which outline exams required to be licensed as a funeral director or embalmer; (4) Texas Occupations Code §651.259 which authorizes the Commission to reciprocate licenses from other states; (5) Texas Occupations Code §651.265 which authorizes the Commission to renew licenses in active/inactive status; (6) Texas Occupations Code §651.266 which authorizes the Commission to adopt rules related to continuing education; (7) Texas Occupations Code §651.3045 which authorizes the Commission to offer education waivers to certain applicants; and (8) Texas Occupations Code Chapter 55 which outlines requirements for occupational licensing of military members, veterans and spouses.

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

§203.1. *Funeral Director and Embalmer License Requirements and Procedure.*

(a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the supervision and direction of a licensed funeral director or embalmer.

(b) An applicant for a license shall meet the eligibility requirements of Occupations Code, §651.253.

(c) The period of a license is two years beginning on the first day of the licensee's birth month. The initial licensing period may be less than two years.

(d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.

(e) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full licensure. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and

pass the State Mortuary Law Examination, and submit to a criminal background check.

(f) **Renewal Procedures and Conditions.**

(1) A license may be renewed beginning 60 days prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.8 of this title (relating to Continuing Education).

(2) A person whose license is expired for 90 days or less may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is 1 and 1/2 times the amount of the normal renewal fee.

(3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

(4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:

(A) retaking and passing the State Mortuary Law Examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the continuing education requirements of §203.8 of this title.

(5) Notwithstanding paragraph (4) of this subsection, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.

(6) Notwithstanding paragraph (4) of this subsection, the Executive Director may waive any prerequisite to obtaining a license to a person whose license has been expired for no more than five years who is also a military service member, military veteran or military spouse as defined by Occupations Code, Chapter 55.

(g) A licensee serving as an active military service member as defined by Occupations Code, Chapter 55, is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

§203.3. *Retired/Disabled License.*

(a) At the time of license renewal, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active status. Upon written application to the Commission, a licensee may be placed in a Retired, Inactive status.

(b) Upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.

(c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs any act of funeral directing and/or embalming.

(d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon

written notification to the Commission and payment of applicable licensing fees.

(e) The fee for Retired, Active or Disabled, Active status is one-half the amount of the license renewal fee charged for active status.

§203.4. *Reciprocal License.*

(a) A person who holds a funeral director's license or an embalmer's license issued by another state, country or territory may reciprocate the license with the Commission.

(b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:

(1) a statement the applicant is the person who holds the license and the applicant's license is current and in good standing;

(2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and the qualifications provided by the applicant are correct;

(3) a copy of a certified transcript showing the applicant graduated from an accredited college of mortuary science; and

(4) any other requirements necessary for licensure under Occupations Code §651.253.

(c) An applicant under this section must show that the applicant has practiced for at least:

(1) one year in a state with license requirements similar to those of the Commission; or

(2) five years in a state that does not have license requirements similar to those of the Commission.

(d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.

(e) Each applicant shall submit to a criminal background check. An applicant is subject to the standards outlined by §203.16 of this title (relating to Consequences of Criminal Conviction).

(f) The Executive Director shall waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(2) of this section.

(g) The applicant shall pay a license fee in an amount set by the Commission.

(h) The executive director may waive any prerequisite to obtaining a license under this section for an applicant who is licensed in a state with substantially equivalent licensing requirements and who is a military service member, military veteran, or military spouse as defined by Occupations Code Chapter 55.

§203.5. *Provisional License.*

(a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code, §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code, §651.302(a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified. This education waiver may be granted only to a person who has never held a provisional license issued by the Commission.

(b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c) must have the college forward a letter of enrollment prior to a provisional license being renewed. An applicant or a provisional license holder who has completed coursework but is not a certified graduate may hold a provisional license if the person has the college forward a letter stating the person has filed for graduation and provide an expected graduation date within 3 months.

(c) If a school or college or mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code §651.253, if the student graduates within 12 months of the loss of accreditation.

(d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.

(e) The provisional funeral director program may not be served in a commercial embalming establishment.

(f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period. A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.

(g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12-month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

(h) Notwithstanding subsection (g) of this section, if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the maximum 24-month license period, the holder's license may be renewed for up to an additional 12 months, for a maximum term of 36 months. The license will be extended only for the number of months the provisional license holder was not enrolled in mortuary school.

(i) Fees will not be refunded to a provisional license holder who fails to complete the program.

(j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code §651.253.

(k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.

(l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.

(m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (1) of this section and the fees required for regular licensure.

(n) Examination Requirements

(1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code, §651.255.

(2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code, §§651.255 - 651.256, depending on the license type being sought.

(3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission. If a person fails to submit an application for licensure within 6 months of taking the Mortuary Law Examination, the score is invalidated and the person must retake and pass the exam prior to licensure.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection.

(o) A person who fails to submit an application within 6 months after submitting to a criminal background check may be required to submit to a subsequent background check.

§203.8. *Continuing Education.*

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

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

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

(2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50-minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers.

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.

(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(6) The Commission may approve courses that have been approved by the Academy of Professional Funeral Service Practice, Inc. (APFSP). A provider submitting such a course would not need to submit the materials required under subsection (c)(3) of this section unless requested by the Commission.

(d) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

- (A) the name of the provider and approval number;
- (B) the name of the participant;
- (C) the title of the course or program, including both the Commission-issued course and program number;
- (D) the number of credit hours given;
- (E) the date and place the course was held;
- (F) the signature of the provider or provider's representative;
- (G) the signature of the attendee; and
- (H) if the course was in-person or on-line.

(2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.

(3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.

(4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice are required to obtain 16 hours of continuing education every two-year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) Persons in Retired or Disabled status are exempt from continuing education.

(3) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(f) The following are mandatory continuing education hours and subjects for each renewal period:

(1) Ethics--two credit hours--this course must at least cover of right and wrong, the philosophy of morals, and standards of professional behavior.

(2) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code Chapter 651, Health and Safety Code Chapter 716, and the Rules of the Commission.

(3) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code Chapters 193, 711, and Texas Administrative Code, Title 25, Chapter 181.

(g) Of the 16 hours of continuing education, four hours must be taken in-person. The remaining 12 hours may be taken through Internet/online presentation. This requirement for in-person continuing education will apply beginning with the June 30, 2020 renewals

(h) The Commission will grant the following credit hours toward the continuing education requirements for license renewal. The credit hours outlined in this section are eligible to be counted toward the four hours of required in-person continuing education.

(1) A person is eligible for a maximum of eight credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(2) A presenter or instructor of approved continuing education is eligible for a maximum of two credit hours per renewal period per course for instruction, regardless of the number of times the course is presented.

(3) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and is present during the entirety of the meeting.

(i) Exemptions.

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (f) of this section.

(2) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(j) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education.

(k) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

*§203.9. Licensure of Funeral Establishments and Commercial Embalming Establishments.*

(a) New License Applications.

(1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and

embalming case report forms to be used, if applicable, which reflect the establishment's name and provide a placeholder for the establishment's license number.

(2) The passage of an inspection is mandatory for a new establishment seeking its initial licensure and for previously licensed establishments that have changed physical location.

(3) The license shall be issued to the establishment's owner.

(4) A change of name or physical address requires the submission of a new establishment license application.

(5) A new license will not be issued unless all fees have been paid. Prior to a new license being issued under paragraph (4) of this subsection, any outstanding penalties of the previous establishment must be paid unless the penalties are the subject of an administrative hearing or judicial review.

(6) A license expires on the last day of the month 12 months from the date of issue.

(b) **Renewal Applications**

(1) The renewal period of a license is 12 months.

(2) A late renewal fee will be assessed for an application for renewal which has been postmarked after its renewal date.

(3) Establishments may be inspected upon the submission of a renewal application.

(4) A renewal license will not be issued unless all fees and outstanding penalties, if any, have been paid or the Commission's records reflect that the applicant is current on a payment plan or that penalties previously assessed are the subject of an administrative hearing or judicial review.

(5) The Commission may investigate any circumstances involved with the renewal of any license as provided for in Occupations Code Chapter 651.

(6) A license will be cancelled if the application for renewal is not received within 90 days of the expiration date of the license.

(c) A funeral establishment or commercial embalming facility may effect a change of ownership by either submitting a new license application under subsection (a) of this section or by notifying the Commission, on a form prescribed by the Commission, within 30 days. In submitting the form, the new owner must attest to the information contained on the form and must submit any documentation required by the Commission. The Commission may assess a fee to accompany the form attesting to the ownership fee. The fee may not exceed half the cost of applying for a new establishment license.

(d) The Commission may refuse to issue a new license or to renew an outstanding license or may revoke an establishment's license if it determines that the license application or the change of ownership affidavit contains materially false information or that a person whose individual license to practice funeral directing or embalming is currently suspended or revoked owns the establishment or an interest in the establishment.

*§203.11. Establishment Names and Licensing.*

(a) Each application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new establishment license, the Commission shall review establishment names in its database. The Commission shall issue the license in the requested name when all licensing requirements are satisfied, unless the Commission

determines that the name is deceptively or substantially similar to the name of another licensed establishment in the same county, metropolitan area, municipality, or service area. In these instances, the Executive Director shall deny a license for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) An establishment's licensed name may be changed by following the procedure outlined in §203.9 of this title (relating to Licensure of Funeral Establishments and Commercial Embalming Establishments) and by satisfying the requirements of subsection (b) of this section.

(d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

(e) All advertising on a website controlled by an entity licensed by the Commission must operate as follows:

(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity and the establishment's license number must appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.

(3) All locations advertised shall be licensed by the Commission.

(f) No funeral establishment, commercial embalming establishment, or crematory shall advertise in a manner which is false, misleading, or deceptive.

(g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided on the website or advertising.

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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Kyle E. Smith

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For further information, please call: (512) 936-2469



**22 TAC §203.14**

The repeal is adopted pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code §651.165, which authorizes the Commission to renew licenses; Texas Occupations Code §§651.255 - 651.256, which outlines exams

required to be licensed as a funeral director or embalmer; Texas Occupations Code §651.259, which authorizes the Commission to reciprocate licenses from other states; Texas Occupations Code §651.265, which authorizes the Commission to renew licenses in active/inactive status; §651.266, which authorizes the Commission to adopt rules related to continuing education; Texas Occupations Code §651.3045, which authorizes the Commission to offer education waivers to certain applicants; and Texas Occupations Code Chapter 55, which outlines requirements for occupational licensing of military members, veterans and spouses. No other statutes, articles, or codes are affected by this section.

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

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## SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

### 22 TAC §§203.24, 203.26, 203.27, 203.31 - 203.33, 203.35

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter B--Duties of a Funeral Establishment/Licensee, specifically rules §203.24--Display of License; §203.26--Presentation of Consumer Brochure; §203.27--Identification of Person Responsible for Making Arrangements; §203.31--Facilities Necessary in a Preparation Room; §203.32--Requirements Relating to Embalming; §203.33--Required Documentation for Embalming; Rule §203.35--Location of Retained Records. The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3767). The rules will be republished.

**REASONED JUSTIFICATION FOR RULE ADOPTION:** Changes to the following rules are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

The adopted amendments to Rule §203.24, Display of License, require the licenses on display at a funeral establishment be current (not expired); clarify that the licenses of temporary employees could be copies and do not have to be displayed; and clarify copies of licenses for both regular full time and regular part time employees no longer employed must be kept at the establishment for two years after employment ends.

The adopted amendment to Rule §203.26, Presentation of Consumer Brochure, eliminate language requiring an establishment to purchase the consumer brochure from the Commission.

The adopted amendment to Rule §203.27, Identification of Person Responsible for Making Arrangements, provide that a person should acknowledge his/her right to control the disposition of the deceased in writing, if possible.

The adopted amendments to Rule §203.31, Facilities Necessary in a Preparation Room, provide the operating table must be non-porous instead of rust proof metal or porcelain and the preparation room be used only for purposes related to the care of the deceased instead of "not used for other purposes." They also clarify the preparation room should not have any public restrooms, whether unenclosed or not. They require the preparation room to have appropriate personal protection equipment related to universal precautions. They allow the Commission to require funeral establishments granted a preparation room exemption under §203.10 to have a room that conforms with some of the standards if human remains are ever present at the establishment.

The adopted amendment to Rule §203.32, Requirements Relating to Embalming, eliminates the requirement clothing/personal effects be "thoroughly disinfected" and instead just state they should be "disinfected" as the Commission believes an item is either disinfected or it is not.

The adopted amendment to Rule §203.33, Required Documentation for Embalming, eliminates citations to other statutes that concern the disposal of unclaimed bodies by county officials and the Anatomical Board's authority to receive unclaimed bodies.

The adopted amendments to Rule §203.35, Location of Retained Records, permit a funeral establishment to release records to the person responsible for making arrangements for final disposition and not just to family members. With respect to petitions requesting an exemption from the requirement for the location of retained records by licensed establishments, they require that records of different establishments not be commingled. The amendments provide an appeal process that an applicant whose petition for an exemption has been denied may follow and provide that a funeral establishment is authorized to maintain its records in a digital or electronic format, as long as it can print the records at the establishment.

**PUBLIC COMMENTS:** Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed amendments. The public comment period began on July 26, 2019 and ended on August 26, 2019. Seven comments were received regarding the proposed amendments or rule repeals.

#### SUMMARY OF COMMENTS:

**Comment:** Licensed funeral director and embalmer Billy C. Val-lie (License #7271) expressed support for the proposed amendments.

**Commission Response:** Agree.

**Comment:** Jim Bates, Director, Funeral Consumers Alliance of Texas, and Sandy Booth, individual, opposed the new text in §203.33(d)(2) which would allow an establishment to place its logo on the Commission's promulgated Authorization to Embalm Form. They both stated it was advertising for the licensed entity on a state-required form that must be signed by a consumer and may give the consumer the impression the licensed entity controls the form, not the Commission.



Commission Response: Agree. The Commission will remove the language from the adopted rules.

Comment: Glenn Bower, President, Commonwealth Institute, and Wayne Cavender, President, Dallas Institute of Funeral Service supported amendments to §203.32(a)(3) which removed the specific amount of dilute solution to be used per 50 pounds of body weight stating embalmers need leeway to make professional decisions during the embalming procedures.

However, Felix Gonzales, Faculty, Mortuary Science Department, San Antonio College opposed the amendments stating the current standards "establish a minimum standard of performance as well as establish a quantifiable level of compliance."

Commission Response: Agree. As the commenters (who are associated with three of the four mortuary schools in Texas and teach the majority of embalmers licensed in the state) are in disagreement over the proposed amendment, the Commission will remove the language from the adopted rules so that it may seek additional information and clarification with the intent of bringing forward amendments to the rule in near future.

Comment: Licensed funeral director Sydney R. Waldman (License #115026) stated the Commission should be allowed to grant an exemption from the preparation room requirement for funeral homes that do not perform embalming for religious reasons.

Commission Response: Disagree. Additional exemptions were discussed at the June Commission meeting. Commissioners voted to only allow for an exemption for those funeral homes with the same ownership located within 50 miles of each other citing health and safety concerns.

The rules to be finally adopted contain the following changes from the rules as published in the July 26, 2019, issue of the *Texas Register*:

§203.32(a)(3) is changed as a result of a printing error in the *Texas Register*. The text as adopted by the Commission reads "(3) Clothing and/or personal effects of the decedent shall either be disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material. The *Texas Register* omitted the strike though of the word "thoroughly".

§203.32--Requirements Relating to Embalming--Strike proposed changes to Section (a)(8) so language would continue to read "(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows:  $C \times V = C' \times V'$ , where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid."

§203.33--Required Documentation for Embalming - Strike proposed changes to Section (d)(2) so the language would continue to read "(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment."

STATUTORY AUTHORITY: The rules are adopted pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; (2) Texas Occupations Code §651.201 which requires the Commission to prepare a consumer brochure; (3) Texas Occupations Code §651.261 which requires a license to be conspicuously posted in a funeral establishment; (4) Texas Occupations Code §651.351 which outlines requirements for funeral establishments including preparation rooms; and (5) Texas Occupations Code §651.460 which outlines violations for failing to maintain records for two years.

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

*§203.32. Requirements Relating to Embalming.*

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the Commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a Medical Examiner, Coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from a family member or the person responsible for making arrangements for final disposition; and, in the event of a disaster of major proportions and with the prior approval of the Executive Director, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state.

(2) Embalmers are required to utilize all personal protective equipment required by either OSHA or its corresponding state agency during the embalming procedure.

(3) Clothing and/or personal effects of the decedent shall either be disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent.

(6) Body orifices (nostrils, mouth, anus, vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows:  $C \times V = C' \times V'$ , where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

#### *§203.33. Required Documentation for Embalming.*

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code §651.457 to obtain permission to embalm.

(c) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

#### (d) Authorization to Embalm Form.

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code §651.407 must be in the possession of the funeral establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

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 C. ENFORCEMENT

### 22 TAC §§203.41 - 203.45, 203.47

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter C - Enforcement, specifically Rules §§203.41 Investigations; 203.42 Notice and Hearings; 203.43 Administrative Penalties and Sanctions; 203.44 Procedures and Criteria for Inspections of Licensed Entities; 203.45 Unprofessional Conduct; and 203.47 Purchase Agreement (statement of funeral goods and services selected). The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3771); therefore, the rules will be republished.

**REASONED JUSTIFICATION FOR RULE ADOPTION.** The adopted amendments to Chapter 203, Subchapter C, are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540 and HB 1731, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

-Rule §203.41, Investigations--The changes would provide that the investigator send a summary of the complaint, instead of a copy of the complaint upon opening an investigation to ensure confidentiality of complainant during initial stages of investigation. It allows the respondent to request a redacted copy of the complaint upon request.

-Rule §203.42, Notice and Hearings--The changes would list the types of informal methods a respondent can use to settle a complaint to include negotiation with the staff attorney or an informal settlement conference with the executive director, staff attorney, and investigator. It provides that an informal settlement conference must allow the complainant an opportunity to be present. The changes also clarify how a case is closed if a settlement is reached via informal methods.

-Rule §203.43, Administrative Penalties and Sanctions--The changes would, allow the agency to adopt higher penalties for a violation if the respondent has multiple violations on his/her records, even if the violations were not the same section of statute. They authorize the Commission to require a respondent to pay a refund to a consumer in lieu of or in addition to an administrative penalty.

-Rule §203.44, Procedures and Criteria for Inspections of Licensed Entities--The changes would delete references to cemeteries and would eliminate Health & Safety Code Chapters 714 and 715 from inspection reviews as the Commission no longer has authority to regulate cemeteries per HB 1540. The amendments establish reasons for the Commission to perform risk-based inspections to include previously found inspection violations, multiple enforcement violations, establishments with a

change of ownership, and newly issued licenses. They allow the Commission to inspect risk-based establishments annually; and allow a risk-based establishment to be declassified as such if it has two consecutive inspections without violations and/ or it has no proven violations within a two-year period. Finally, the changes renumber a provision that allows the Commission to inspect an establishment as a result of a complaint, with the limited scope of proving/disproving the complaint.

-Rule §203.45, Unprofessional Conduct--The changes would provide that it is unprofessional conduct for all licensed entities not just funeral establishments to operate in an unsanitary manner. They provide that it is unprofessional conduct to fail to make payment for services rendered on behalf of a consumer as the Commission believes the consumer ultimately could be harmed by the licensed entity's failure to pay another entity for services rendered on behalf of the consumer.

-Rule §203.47, Purchase Agreement (Statement of Funeral Goods and Services Selected) The changes would provide update the rules as directed by HB 1731 enacted by the 86th Legislature regarding payments between funeral homes on behalf of a consumer. Specifically, the charges related to removal, refrigeration, embalming (if authorized), transportation, and casket (if used) are required to be included on a purchase agreement.

**PUBLIC COMMENTS:** Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendments to this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. Two comments were received regarding the proposed amendments.

#### SUMMARY OF COMMENTS:

Comment: Licensed funeral director and embalmer Billy C. Valie (License #7271) expressed support for the proposed amendments.

Commission Response: Agree.

Comment: Licensed funeral director Sydney R. Waldman (License #115026) stated the amendment to §203.43(e) should be clarified to only allow the Commission to require the refund of a particular item or items in question, but not the total amount of the funeral contract unless no payments were made to outside, third parties.

Commission Response: Agree. Statute already provides that the "amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder." While, adding similar language to the rule is unnecessary, the Commission is not opposed to including the statutory language in the rule.

**CHANGES TO PUBLISHED TEXT:** The rules to be finally adopted contain the following changes from the rules as published in the July 26, 2019, issue of the *Texas Register*:

§203.43(d) is amended to clarify how or when the Commission may impose a higher penalty for a licensee who commits multiple violations. The text now reads: "(d) Multiple violations of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10, may result in higher penalties. Multiple violations may consist of violation of more than one section of the law, numerous violations of the same section of the law, or

a combination of both." The amended language does not change the Commission's intent of the amendment as published in the *Texas Register*.

§203.43(e) is amended at the suggestion of a commenter to include the following sentence: The amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder.

§203.44(a)(1) is changed as a result of a printing error in the *Texas Register*. The text as adopted by the Commission reads (1) All licensed funeral establishments, commercial embalming facilities, and crematories] shall be inspected at least once every two years. The *Texas Register* omitted the strike through of "and cremeteries.

§203.45(b)(13) is amended to clarify what is meant by failing to make a payment on behalf of a consumer so the language now reads: (13) failing to make payment to a sub-contractor for consumer-related services performed by the sub-contractor pursuant to an agreement with the licensee; or. The amended language does not change the Commission's intent as published in the *Texas Register*.

STATUTORY AUTHORITY: The rules are adopted pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code §651.157 which outlines inspection procedures, including risk-based inspection; (3) Texas Occupations Code §651.202 which allows for the investigation of complaints and for informal methods to settle complaints; (4) Texas Occupations Code §651.2035 which requires confidentiality of complainant information; (5) Texas Occupations Code §651.406 which provides for certain funeral homes to include certain charges from other funeral homes on a purchase agreement; (6) Texas Occupations Code §651.459 which creates a violation for unprofessional conduct; (7) Texas Occupations Code §651.507 which allows for increased penalties for multiple violations; and (8) Texas Occupations Code §651.603 which authorizes the Commission to require refunds to consumers. The changes are made pursuant to updates to statutes as enacted by the 86th Texas Legislature in HB 1540 and HB 1731.

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

#### §203.43. *Administrative Penalties and Sanctions.*

(a) If a person violates any provision of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515 - 651.552.

(b) The Administrative Penalties and Sanctions Schedule published following this section sets penalty limits and ranges by class of offense and number of offenses.

(c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:

- (1) Attempts by the licensee to correct or stop the violation;
- (2) Number of complaints previously found justified against licensee;
- (3) Whether the act was unintentional; and

(4) Other mitigating factors that could warrant a lower penalty.

(d) Multiple violations of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10, may result in higher penalties. Multiple violations may consist of violation of more than one section of the law, numerous violations of the same section of the law, or a combination of both.

(e) The Commission may require a licensee to issue a refund to a consumer in lieu of or in addition to assessing an administrative penalty. The amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder. Figure: 22 TAC §203.43(e)

#### §203.44. *Procedures and Criteria for Inspections of Licensed Entities.*

(a) Inspection Procedures.

(1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting a licensed entity. If prior reports reveal problems, the inspector shall determine whether the licensed entity has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct inspections between the hours of 8:00 a.m. and 5:00 p.m., but a licensed entity is required to be open at all times to inspections for violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, and 716.

(5) If a licensed entity is not open for business during regular business hours and an inspector is unable to contact any employee or owner to open the licensed entity to conduct the inspection, the inspector shall notify the licensed entity by mail of the attempted inspection. If a licensed entity is unavailable for inspection during regular business hours twice during a six-month period, the Commission may file a complaint against the licensed entity, making the licensed entity subject to an administrative penalty or other action.

(b) The Commission may classify a licensed entity as risk-based for the following reasons:

(1) Previously found violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, and 716, following a regular inspection.

(2) Multiple violations of Occupations Code, Chapter 651, or Rules of the Commission.

(3) Change of ownership.

(4) Newly issued license.

(c) Notwithstanding subsection (a)(1) of this section, a licensed entity may be inspected annually if the Commission classifies the entity as risk-based.

(d) The Commission will declassify an establishment as risk-based if it has two consecutive inspections with no found violations and/or it has no proven violations within a two-year period.

(e) If the Commission is in the process of conducting an investigation of a licensed entity, staff may inspect the licensed entity for the limited purpose of proving or disproving the validity of the com-

plaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

§203.45. *Unprofessional Conduct.*

(a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Occupations Code, Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;

(3) operating the licensed entity in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a Commission employee in the lawful performance of such employee's duties of enforcing Occupations Code, Chapter 651, or the Rules of the Commission;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;

(7) physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;

(10) communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;

(11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;

(12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;

(13) failing to make payment to a sub-contractor for consumer-related services performed by the sub-contractor pursuant to an agreement with the licensee; or

(14) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead.

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

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For further information, please call: (512) 936-2469



## CHAPTER 205. CEMETARIES AND CREMATORIES

### 22 TAC §205.1, §205.2

The Texas Funeral Service Commission (Commission) adopts the repeal of Title 22 Texas Administrative Code Part 10, Chapter 205, Cemeteries and Crematories, Rule §205.1, concerning Cemetery License Requirements and Procedure, and Rule §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress. The repeals are adopted without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3775), and will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments to Chapter 205, Cemeteries and Crematories, remove references to cemeteries as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries.

The repeal of Rule §205.1, concerning Cemetery License Requirements and Procedure, and Rule §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress, are adopted as a direct result of HB 1540, passed by the 86th Texas Legislature, which repeals the Commission's authority over cemeteries.

PUBLIC COMMENT: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed repeal of this rule. The public comment period began on July 26, 2019, and ended on August 26, 2019. No comments were received regarding the proposed amendments or rule repeals.

STATEMENT OF STATUTORY AUTHORITY: The rules are repealed pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Health & Safety Code §716.0035 which outlines when a crematory establishment may accept deceased human remains;

and HB 1540, passed by the 86th Texas Legislature, which removed the Commission's authority to regulate cemeteries.

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

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903363

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Effective date: October 3, 2019

Proposal publication date: July 26, 2019

For further information, please call: (512) 936-2469



## CHAPTER 205. CREMATORIES

### 22 TAC §205.5

The Texas Funeral Service Commission (Commission) adopts an amendment to Title 22 Texas Administrative Code Part 10, Chapter 205, Cemeteries and Crematories, Rule §205.5, concerning Acceptance of Remains. The amended rule is adopted without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3775) and will not be republished.

**REASONED JUSTIFICATION FOR RULE ADOPTION:** The adopted amendment to Chapter 205, Cemeteries and Crematories, removes references to cemeteries as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries. The adopted amendment to Rule §205.5, Acceptance of Remains, deletes language prohibiting certain crematories from accepting human remains for cremation until the cremation is authorized by a justice of the peace/medical examiner and instead mirrors statute to allow a crematory to accept human remains for refrigeration before receiving authority to cremate.

**PUBLIC COMMENT:** Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed amendment of this rule. The public comment period began on July 26, 2019, and ended on August 26, 2019. No comments were received regarding the proposed amendment.

**STATEMENT OF STATUTORY AUTHORITY:** The rules are adopted pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Health & Safety Code §716.0035 which outlines when a crematory establishment may accept deceased human remains; and HB 1540, passed by the 86th Texas Legislature, which removed the Commission's authority to regulate cemeteries.

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

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903282

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Effective date: October 3, 2019

Proposal publication date: July 26, 2019

For further information, please call: (512) 936-2469



## CHAPTER 206. GUARANTEED STUDENT LOANS

### 22 TAC §206.1

The Texas Funeral Service Commission (Commission) repeals Title 22 Texas Administrative Code Part 10, Chapter 206, Guaranteed Student Loans.

**REASONED JUSTIFICATION FOR RULE ADOPTION:** The 86th Legislature enacted SB 37 by Senator Judith Zaffirini. This legislation prohibits licensing authorities from enacting rules that bar license holders who are in default on student loans from renewing their licenses.

The repeal of Title 22 Texas Administrative Code Part 10, Chapter 206, Guaranteed Student Loans is adopted as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3776).

**PUBLIC COMMENT:** Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed repeal of this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. No comments were received regarding the proposed amendments.

**STATEMENT OF AUTHORITY:** This repeal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and SB 37, passed by the 86th Texas Legislature (2019).

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

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

Filed with the Office of the Secretary of State on September 13, 2019.

TRD-201903283

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Effective date: October 3, 2019

Proposal publication date: July 26, 2019

For further information, please call: (512) 936-2469



# 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 Higher Education Coordinating Board

### Title 19, Part 1

The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 1, concerning Agency Administration. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Linda Battles, Deputy Commissioner, Agency Operations and Communications/COO P.O. Box 12788; Austin, Texas 78711.

TRD-201903318

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 16, 2019



The Texas Higher Education Coordinating Board files this notice of intention to review the following chapters: Chapter 3; Chapter 4; Chapter 5; Chapter 6; Chapter 7; Chapter 8; Chapter 9; Chapter 11; Chapter 14; Chapter 15; Chapter 26; and Chapter 27. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in these chapters continue to exist.

Comments on the proposed review may be submitted to Rex Peebles, Assistant Commissioner, Academic Quality and Workforce P.O. Box 12788; Austin, Texas 78711.

TRD-201903319

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 16, 2019



The Texas Higher Education Coordinating Board files this notice of intention to review the following chapters: Chapter 13 and Chapter 17. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in these chapters continue to exist.

Comments on the proposed review may be submitted to Julie Eklund, Assistant Commissioner, Strategic Planning and Funding P.O. Box 12788; Austin, Texas 78711.

TRD-201903320

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 16, 2019



The Texas Higher Education Coordinating Board files this notice of intention to review the following chapters: Chapter 21; Chapter 22; and Chapter 23. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in these chapters continue to exist.

Comments on the proposed review may be submitted to Charles W. Puls, Deputy Assistant Commissioner, Student Financial Aid Programs P.O. Box 12788; Austin, Texas 78711.

TRD-201903321

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 16, 2019



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 25, concerning Optional Retirement Program. This review is in accordance with the requirements of the Texas Government Code, Section 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Toni Alexander, Human Resources Department; P.O. Box 12788; Austin, Texas 78711.

TRD-201903322

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 16, 2019



Texas Commission on Environmental Quality

## **Title 30, Part 1**

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 285, On-Site Sewage Facilities.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 285 continue to exist.

Comments regarding suggested changes to the rules in Chapter 285 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

### **Submittal of Comments**

The commission invites public comment on this preliminary review of the rules in Chapter 285. Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-094-285-CE. Comments must be received by October 28, 2019. For further information, please contact Alfonso Fuentes, Program Support Division at (512) 239-1407.

TRD-201903328

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 17, 2019

## **Adopted Rule Reviews**

### **Public Utility Commission of Texas**

#### **Title 16, Part 2**

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code (TAC), Chapter 26, Substantive Rules Applicable to Telecommunications Providers pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The notice of intention to review Chapter 26 was published in the *Texas Register* on February 22, 2019 (44 TexReg 876). APA §2001.039 requires that each state agency review its rules every four years and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or re-adopting the rules continues to exist. The commission has completed the review of the rules in Chapter 26 pursuant to APA §2001.039 and finds that the reasons for adopting the rules in Chapter 26 continue to exist.

The commission requested comments on whether the reasons for adopting the rules in Chapter 26 continue to exist. The commission received comments from the Texas Telephone Association (TTA), Texas Statewide Telephone Cooperative (TSTCI), the National Lifeline Association (NALA), and the Texas 911 Entities, a group comprised of the Texas 911 Alliance, the Texas Commission on State Emergency Communications, and the Municipal Emergency Communications Districts Association (Texas 911 Entities). The commission received reply comments from TTA, TSTCI, and Virgin Mobile USA (Virgin Mobile). All

comments, including any not specifically referenced herein, were fully considered by the commission.

### **Summary of Comments**

#### **Comments on Specific Provisions**

##### **Section 26.52 Emergency Operations**

TSTCI recommended that the Commission revise this subsection to adopt the battery reserve requirements for fiber-to-the-premises (FTTP) installations to mirror the Federal Communications Commission's (FCC's) power backup requirements.

#### **Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts this section.**

##### **Section 26.53 Inspections and Tests**

TSTCI recommended that the Commission eliminate the following provision in 16 TAC §26.52(d), "[E]ach DCTU shall advise the commission of the numbers assigned for these test terminations." Alternatively, if the Commission chooses not to delete this provision from the rule, TSTCI recommended that the rule should be amended for companies to provide the numbers assigned for test terminations upon Commission request.

#### **Commission Response**

**The commission acknowledges that the proposal may have merit and will consider as resources permit. The commission readopts this section.**

##### **Section 26.54 Service Objectives and Performance Benchmarks**

TSTCI urged the Commission to delete subsections (b)(1), (b)(2), and (b)(3) to remove references to outdated technology and amend all other subsections to reflect the current use of technologies such as fiber optics cable and soft switches. TSTCI also proposed deleting subsection (b)(3) regarding the requirement that all voice circuits allow transmission of at least 14.4 kbps of data per second either through an industry standard modem or a facsimile machine. TSTCI contended this is an outdated obligation. TSTCI recommended amending all other subsections in § 26.54 to reflect the current use of technologies such as fiber optic cable and soft switches which facilitate the deployment of FTTP.

#### **Commission Response**

**The commission acknowledges that a review of this section may be warranted and will consider doing so as resources permit. The commission readopts this section.**

##### **Section 26.57 Requirements for a Certificate Holder's Use of an Alternate Technology to Meet Its Provider of Last Resort Obligation**

TSTCI recommended that the Commission repeal §26.57 to reflect the fact the communications technology has advanced significantly since the adoption of this rule. TSTCI requested that, if any requirement remains, it should be simply that if performance standards cannot be met, then exceptions can be sought to provide service via some alternate method.

#### **Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts this section.**

##### **Section 26.78 State Agency Utility Account Information**



TSTCI encouraged the Commission to conduct a proceeding to simplify and streamline the State Agency Utility Account Information report. TSTCI claimed that this report is costly and time-consuming to prepare for small ILECs with limited resources. TSTCI also believes an evaluation of the report is necessary to determine if the report can be modified and still meet the needs of the State, or possibly be eliminated.

**Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts this section.**

**Section 26.79 Equal Opportunity Reports, Section 26.80 Annual Report on Historically Underutilized Businesses, Section 26.85 Report of Workforce Diversity and Other Business Practices**

TSTCI suggests that the Commission amend these sections to reflect the written correspondence that commission staff sent to telecommunications providers on January 11, 2019, that exempts all non-dominant COA and SPCOA holders, not just exempt carriers, from having to submit the reports required under 16 TAC §26.79(c), 16 TAC §26.80(c) and 16 TAC §26.85(d).

**Commission Response**

**The commission acknowledges that these proposals may have merit and will consider amending the rules as resources permit. The commission readopts these sections.**

**Section 26.128 Telephone Directories**

TSTCI commented that several requirements in this rule need to be updated and amended. First, TSTCI suggested that the requirement to include sample long distance rates in the directory is not useful to consumers given that rates change frequently in today's competitive market. Second, TSTCI claimed that the requirement to include local and toll-free numbers of state agencies poses problems because of the sheer number of agencies and the changes in telephone numbers. Finally, TSTCI stated that the requirement for annual publication sometimes poses a problem for small ILECs because they may have difficulty finding a publisher willing and able to meet the rules requirements, or the price is prohibitive for a small distribution in the rural areas. TSTCI urged the Commission to explore possible alternatives to providing only hard copy white page directories to customers.

**Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts this section.**

**Section 26.142 Integrated Services Digital Network (ISDN)**

TSTCI recommended that this rule be repealed because it is outdated and obsolete due to technological advances that have been made over the 20 years since this rule was adopted.

**Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts this section.**

**Section 26.272 Interconnection, Section 26.435 Cost Recovery Methods for 9-1-1 Dedicated Transport, Section 26.433 Roles and Responsibilities of 9-1-1 Service Providers.**

The Texas 911 Entities commented that the portions of the commission's rules that address 9-1-1 service remain important for public safety in Texas and should be maintained. The Texas 9-1-1 Entities

expressed concern that some legacy 9-1-1 systems and processes will not meet future public safety needs in Texas. The Texas 9-1-1 Entities suggested amending these sections to modernize the validation of 9-1-1 data by providing for the preferred use of a location validation function (LVF) to validate address data for 9-1-1 calls. The LVF would assist in providing addresses during emergency calls placed using Internet Protocol infrastructure.

**Commission Response**

**The commission acknowledges that the proposal may have merit and will consider amending the rules as resources permit. The commission readopts these sections.**

**Section 26.407 Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments and Section 26.73 Annual Earnings Report**

TSTCI and TTA filed joint comments on these sections. TSTCI and TTA believe that the reporting requirements in 16 TAC §26.407(e) supersede and replace the prior reporting requirements in 16 TAC §26.73. TSTCI and TTA stated that SB 586, which was enacted during the 2017 legislative session, amended the Public Utility Regulatory Act (PURA) § 56.032 and required the Commission to determine and disburse support to small providers to permit the small providers an opportunity to earn a reasonable return. The Commission adopted 16 TAC §26.407 to implement SB 586 in Project No. 47669. The new rule included annual reporting requirements.

TSTCI and TTA stated that the data that an electing small provider must include in a 16 TAC §26.73 earnings report is now filed in its 16 TAC §26.407(e) report each year with additional detail.

TSTCI and TTA suggested that for any given calendar year, only the newer, broader, and more accurate reports under 16 TAC §26.407 need to be filed each September 15th. Accordingly, TSTCI and TTA recommend the addition of a new paragraph (d) at the end of 16 TAC §26.73 as follows:

"(d) This section does not apply to an entity that has elected into the review mechanism established under §26.407 of this Chapter and files annual reports thereunder."

In addition to the comments on 16 TAC §§26.73 and 26.407, TSTCI and TTA requested that the Commission find good cause to waive the filing of the 16 TAC §26.73 annual earnings reports by certain companies so long as those companies timely file annual reports under 16 TAC §36.407.

**Commission Response**

**The commission acknowledges that a review of these reporting requirements is warranted and will consider doing so as resources permit. The commission readopts these sections. The commission will not address the other requests for relief in TSTCI and TTA's filing as part of the Chapter 26 review.**

**Section 26.417 Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).**

NALA submitted comments regarding 16 TAC §26.417 (c)(1)(C), which requires a telecommunications provider to offer basic local telecommunications service (BLTS) using either its own facilities, purchased unbundled network elements (UNEs) or a combination of its own facilities, purchased UNEs and resale of another carrier's service to be eligible to receive Texas Universal Service Fund (TUSF) support.

NALA suggested that this requirement does not reflect current federal policy, which has changed since this section was adopted. At the time §26.417(c)(1)(C) was adopted, an eligible telecommunications carrier

(ETC) was required to offer the federally supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. Non-facilities-based providers, specifically wireline resellers, were deemed ineligible for federal support. According to NALA, this was done to prevent them from being able to "double recover" because they would have received both the universal service subsidy and a discount through subsidized wholesale rates. However, in 2005, the FCC, after revisiting the "own facilities" issue relative to wireless resellers, found the "own facilities" requirement was unnecessary to achieve the Lifeline program purposes. This decision was made because there was no double recovery of subsidized rates, the requirement was not needed to protect consumers, and the removal of the requirement would benefit the public because it would expand eligible participation in the Lifeline program. Based on their findings, the FCC adopted forbearance from the "own facilities" requirements for wireless reseller ETCs who solely provide Lifeline services to low-income customers. A few years later, the FCC extended the "own facilities" forbearance to other ETCs and in 2012 applied the rationale to all non-facility-based providers. NALA urged the commission to adopt the FCC's interpretation of the "own facilities" requirement as it relates to wireless resellers and to proceed with a rulemaking to determine how the rule could be amended to allow for greater customer choice in Lifeline services.

NALA also argued that having only one wireless Lifeline eligible telecommunications provider (ETP) in Texas is harmful to low-income customers and the Lifeline market. NALA contended that Virgin Mobile, the only wireless ETP, was able to enhance its service offering with the additional state funding and now has a competitive advantage over other wireless ETCs. In total, NALA advocates that the commission open a rulemaking to determine how 16 TAC §26.417(c)(1)(c) could be amended to give low income customers in Texas greater access to Lifeline services.

TTA noted that Lifeline is not an individual service but a component of BLTS. TTA criticized the national wireless resellers, claiming that they desire the additional revenues but not the additional obligations of ETP designation. TTA also mentioned that the FCC recently attempted to prohibit wireless resellers from participating in the Lifeline program. TTA urged the commission to carefully consider the monetary impacts to the TUSF before deciding whether wireless resellers should be allowed to participate in the state's low-income program. TTA estimated that Lifeline disbursements would grow from \$4 million per year to approximately \$20 million per year if wireless resellers are able to become ETPs.

Virgin Mobile opined that the "own facilities" requirement for ETPs is clear and therefore proposed no changes to the existing rule. Virgin Mobile pointed out that TTA incorrectly identified Virgin Mobile as being a "national wireless reseller" and as a result overestimated the financial impact that wireless resellers could have on the Texas Lifeline support program if allowed to obtain ETP designation. Virgin Mobile also noted that it has a pending contested case before the commission for ETP designation.

TSTCI replied and stated that they respectfully disagree with allowing wireless resellers the ability to become an ETP. TSTCI noted that they have opposed such petitions in the past based on their belief and support of the current rules. TSTCI stated that it does not see this project as the appropriate place to address this highly substantive issue and would welcome the opportunity to participate in any future rulemaking that would more specifically and fully address this particular issue.

#### **Commission Response**

**The commission acknowledges that a review of this section may be warranted and will consider amending the rules as resources permit. The commission readopts this section.**

The commission has completed the review of Chapter 26 as required by Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter 26 continue to exist. Therefore, the commission re-adopts Chapter 26, Substantive Rules Applicable to Telecommunication Service Providers, in its entirety, under PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2017) which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039 (West 2017), which requires each state agency to review and re-adopt its rules every four years.

Cross reference to Statutes: PURA §14.002 and Texas Gov't. Code §2001.039.

This agency certifies that the rules in Chapter 26, as re-adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that Chapter 26, Substantive Rules Applicable to Telecommunication Service Providers, is re-adopted under Texas Government Code §2001.039 with no changes to this chapter.

TRD-201903250  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 13, 2019



Texas Commission on Environmental Quality

#### **Title 30, Part 1**

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1901).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 35 provide the procedures for the commission and the executive director to issue temporary or emergency mandatory, permissive, or prohibitory orders and by those orders to issue temporary permits or temporarily suspend or amend permit conditions

#### **Public Comment**

The public comment period closed on May 13, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 35 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903238  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: September 13, 2019

◆ ◆ ◆  
The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 101, General Air Quality Rules, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the March 29, 2019, issue of the *Texas Register* (44 TexReg 1589).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that the rules in Chapter 101, Subchapter A, §§101.1 - 101.5, 101.8 - 101.10, 101.13, 101.14, 101.18 - 101.21, 101.24, and 101.26 - 101.28; Subchapters B, C, F, and J; and Subchapter H, Divisions 1 - 4 and 6 continue to exist. The rules in Chapter 101 provide the general regulatory structure for the implementation of state and federal statutes and rules regarding air quality in Texas. Chapter 101 contains definitions and sections that can apply to all sources of air contaminants in Texas, and the chapter includes the agency's policies regarding the use of discretion and the use of administrative and judicial remedies in applying and enforcing the rules.

The rules in Subchapter A include definitions for terms used in all the sections that govern the commission's air quality programs found in 30 TAC Chapters 101, 106, 111 - 118, and 122. The subchapter also contains rules that address prohibition of causing nuisance conditions or traffic hazards; circumvention of the Texas Clean Air Act (TCAA) or rules adopted pursuant to the TCAA; emissions inventory and sampling requirements and procedures; fee assessment; requests for single property designations; an alternate emission reduction policy; stringency determinations for federal operating permits; and the application of and compliance with federal air quality standards in Texas.

The rules in Subchapter B implement the failure to attain fee for the Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area as required by federal Clean Air Act, §182(d)(3) and (e) and §185.

The rules in Subchapter C fulfill a state statutory requirement to implement a voluntary monitoring program for components or equipment not subject to commission rules for leak detection and repair in effect on the date of detection. The program encourages and provides incentives for voluntary monitoring using alternative leak detection technology, such as optical gas imaging technology, to detect and repair leaks not otherwise detectable.

The rules in Subchapter F establish the requirements for recording and reporting of exceedances of emission limits due to emissions events and scheduled maintenance, startup and shutdown activities, as well as the availability of an affirmative defense for these violations if regulatory criteria are met. In addition, the subchapter includes rules regarding variances.

The rules in Subchapter H address the generation, banking, and use of emission reduction credits and discrete emission reduction credits; the banking and trading of emissions allowances for grandfathered electrical generating units; and the mass emissions and highly reactive volatile organic compound emissions cap and trade programs in the HGB area. The subchapter also includes rules associated with the federal Clean Air Interstate Rule (CAIR).

Finally, the rules in Subchapter J establish the surcharge and public notice requirements for requests for expedited permit applications.

The review resulted in a determination that the following rules are obsolete.

Section 101.23, entitled "Alternate Emission Reduction (Bubble) Policy," is obsolete and no longer needed because of the very limited legal and practical applicability of the rule and due to changes in law and permitting practices since rule adoption in 1981 that address site-wide compliance issues. Approval of an alternate method would require issuance of an order by the commission, and no such order has been applied for or issued for at least the past 25 years.

The rules in Subchapter H, Division 7, entitled "Clean Air Interstate Rule," are obsolete. Since the United States Environmental Protection Agency replaced CAIR with the Cross-State Air Pollution Rule in 2011, the rules in Subchapter H, Division 7 are no longer needed. These rules were adopted in 2006 to implement the federal CAIR to assist nonattainment areas in downwind states in achieving compliance with the 1997 national ambient air quality standards for particulate matter less than or equal to 2.5 micrometers.

#### Public Comment

The public comment period closed on April 29, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 101 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201903242

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2019

◆ ◆ ◆  
The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1901).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 113 are required to implement emission standards for hazardous air pollutants (HAP) and for certain facilities. The United States Environmental Protection Agency (EPA) has delegated the authority to administer and enforce the standards and requirements from the Code of Federal Regulations (CFR) referred to in Chapter 113 to the commission, or the commission has submitted state plans to the EPA in accordance with 42 United States Code, §7411(d) and §7429.

The rules in Chapter 113 implement emission standards for radon notification, testing, and reporting requirements from the National Emissions Standards for Radon Emissions from Phosphogypsum Stacks (40 CFR Part 61, Subpart R). The rules also allow the commission to administer and enforce the technology-based standards intended to control HAP emissions referred to as maximum achievable control technology and generally available control technology standards from the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Source Categories established in the federal Clean Air Act, §112, 40 CFR Part 63.

The rules also implement standards for certain specified waste facilities and landfills and the pollutants associated with those facilities. Air contaminants for municipal solid waste (MSW) landfills are regulated by incorporating emission standards and guidelines established by the EPA on March 12, 1996, and amended August 17, 1998, for MSW landfills. The rules establish exceptions and a compliance schedule and there are also air emission standards established for medical waste incinerators including opacity and contaminant limits considering the size of the incinerator units. Emission and performance standards, and requirements for small MSW combustion units, commercial and industrial solid waste incineration units, and other solid waste incinerator units are also established in Chapter 113 for units constructed on or before August 30, 1999; November 30, 1999; and December 9, 2004, respectively.

Lastly, the rules allow the commission to regulate and enforce the EPA requirements that consolidated major portions of several New Source Performance Standards and NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks within synthetic organic chemical manufacturing operations.

#### Public Comment

The public comment period closed on May 13, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 113 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903243

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1901).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 301 are required because the rules include general provisions applicable to levee improvement districts, including procedures applicable to the formation of levee improvement districts, approval of levees and other improvements, rules regarding notices and hearings, rules regarding unauthorized levees and other improvements, fees, and requirements for information to be filed with the executive director. These rules are based on the specific authority granted in Texas Water Code (TWC), §16.236, to make and enforce rules regarding levee safety, TWC, Chapter 57, as well as, the general rulemaking authority granted the commission in TWC, §5.103.

#### Public Comment

The public comment period closed on June 13, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 301 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903239

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 324, Used Oil Standards, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1902).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 324 are required because the rules provide requirements for the management of used oil and include the requirements for the commission to issue registrations for Used Oil Handlers who transport, process, re-refine, and market used oil. In addition, the rules also include the requirements for the registration of Used Oil Collection Centers that accept used oil from household used oil recyclers and other generators to reduce oil-related environmental pollution in a manner that complies with state and federal requirements to protect human health and the environment.

Additionally, the rules in Chapter 324 retain the United States Environmental Protection Agency primacy authority of 40 Code of Federal Regulations Part 279 and implement state authority under Texas Health and Safety Code, Chapter 371.

#### Public Comment

The public comment period closed on May 13, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 324 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903246

Robert Martinez

Director, Environmental Quality Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2019



# TABLES & GRAPHICS

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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.

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Figure: 22 TAC §203.43(e)

**Class A**

**1<sup>st</sup> Violation: \$250**

**2<sup>nd</sup> Violation: \$750**

**3<sup>rd</sup> Violation: \$1,000 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

Occ. Code	651.157(e)	Failure to have premises open at all times to inspection
Occ. Code	651.261	Failure to conspicuously display holder's license in each location
Occ. Code	651.304(a)	Failure by provisional licensee to timely notify Commission of employment
Occ. Code	651.304(d)	Failure by FD/Embalmer to prepare affidavit of completed cases if provisional leaves employment
Occ. Code	651.351(d)(1)	Failure by Funeral Establishment to meet building, health & safety codes
Occ. Code	651.351(d)(3)	Failure by Funeral Establishment to include facilities in which funeral services may be conducted
Occ. Code	651.351(d)(4)	Failure by Funeral Establishment to have access to rolling stock
Occ. Code	651.351(d)(5)	Failure to maintain preparation room (i.e. have necessary equipment/supplies)
Occ. Code	651.351(d)(6)	Failure by Funeral Establishment to include facilities to comply with sanitary codes
Occ. Code	651.351(d)(7)	Failure by Funeral Establishment to include required casket display
Occ. Code	651.351(f)	Failure by Funeral Establishment to include required casket display
Occ. Code	651.403	Failure to promptly notify Commission of FDIC change
Occ. Code	651.404	Failure to provide consumer brochure
Occ. Code	651.407(c)	Failure to retain written consent for two years
Occ. Code	651.454(a)(1)	Failure to provide consumer brochure
Occ. Code	651.454(a)(4)	Failure to provide general price information by telephone within reasonable time
Occ. Code	651.454(b)(1)	Restrict, hinder, or attempted to restrict or hinder advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers
Occ. Code	651.457(a)(3)	Allowed the presence/participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with 651.407
Occ. Code	651.503	Failure to file written report in 15 days as required for "Letter of Warning" finding
H&S	716.103	Failure to place ID in container

**Class B**

**1<sup>st</sup> Violation: \$500**

**2<sup>nd</sup> Violation: \$1,000**

**3<sup>rd</sup> Violation: Up to \$3,500 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

Occ. Code	651.405	Failure of Funeral Establishment to include all provisions/notifications on GPL
Occ. Code	651.4055	Failure of Crematory to include all provisions/notifications on GPL
Occ. Code	651.406	Failure of Funeral Establishment to include all provisions/notifications on Purchase Agreement
Occ. Code	651.4065	Failure of Crematory to include all provisions/notifications on Purchase Agreement
Occ. Code	651.4085	Failure of FD or agent to be present when casket is interred or entombed unless out of state
Occ. Code	651.454(a)(2)	Failure to provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep

Occ. Code	651.454(a)(3)	Failure to explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer
Occ. Code	651.454(b)(2)	Restricted, hindered, or attempted to restrict or hinder: an agreement for funeral services between a consumer and a funeral director or embalmer
Occ. Code	651.454(c)	Solicited business or offered an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation was made under a permit issued under Chapter 154, Finance Code
Occ. Code	651.455(a)(1)	Used false statement to mislead or deceive the public regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services
Occ. Code	651.455(a)(2)	Used false statement to mislead or deceive the public regarding the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains
Occ. Code	651.455(a)(3)	Used false statement to mislead or deceive the public regarding the airtight or watertight properties of a casket or outer enclosure
Occ. Code	651.455(a)(4)	Used false statement to mislead or deceive the public regarding the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment
Occ. Code	651.455(a)(5)	Used false statement to mislead or deceive the public regarding an activity regulated under this chapter, including the sale of funeral related goods or services
Occ. Code	651.456(3)	Violated state law regarding transportation, storage, refrigeration, inurnment, interment, or disinterment of dead human body
Occ. Code	651.459(a)(3)	Engaged in <i>negligence</i> in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
Occ. Code	651.459(a)(5)	Directly or indirectly employed a person to solicit individuals or institutions by whose influence dead human bodies are turned over to a particular funeral director, embalmer, or funeral establishment
Occ. Code	651.459(b)	Stated or implied that a customer's concern with the cost of any funeral service or funeral merchandise was improper or indicated a lack of respect for the deceased
Occ. Code	651.460(a)(1)	Failed to provide a customer with a purchase agreement as required by Section 651.406
Occ. Code	651.460(a)(2)	Failed to retain and make available to the Commission copies of all price lists, written notices, embalming documents, and memoranda of agreement required for two years after the date of distribution or signing
Occ. Code	651.460(a)(3)	Violates chapter or Rule of Commission
Occ. Code	651.460(a)(5)	Associated with a funeral establishment, whether licensed or not, and failed to comply with Chapter 651 or Commission rule
Occ. Code	651.460(a)(6)	Knowingly violates Section 711.002(l), Health and Safety Code
Occ. Code	651.460(b)(1)	Failure by a funeral establishment to substantially comply with requirements of Section 651.351 (i.e., have a preparation room at all)
H&S	716.102	Failure to furnish receipt of remains
H&S	716.153	Simultaneous cremation without authorization
H&S	716.155	Commingling remains without authorization
H&S	716.251	Failure of crematory to maintain records for five years

**Class C**

**1<sup>st</sup> Violation: \$1,000**

**2<sup>nd</sup> Violation: \$1,500**

**3<sup>rd</sup> Violation: Up to \$4,000 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

Occ. Code	651.306	FD/Embalmer is not physically present when supervising provisional licensee
Occ. Code	651.401(b)	Failure of licensed funeral director to direct removal of body
Occ. Code	651.401(d)	Unlicensed person commits first call violations

Occ. Code	651.406(e)	Failure of Funeral Establishment to remit funds to transferring funeral home
Occ. Code	651.407(a)	Use of dead human body by mortuary school without written consent
Occ. Code	651.451(7)	Permitted another to use the person's license or registration to perform an activity regulated under 651
Occ. Code	651.453	Advertised in misleading or deceptive way or used the name of person who is falsely represented to be the license holder
Occ. Code	651.456(1)	Took custody of body without permission
Occ. Code	651.456(2)	Refused to promptly surrender a body to authorized agent (or representative)
Occ. Code	651.457(a)(1)	Embalmed a body without receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or making a documented reasonable effort over a period of at least three hours to obtain the permission
Occ. Code	651.457(a)(4)	Placed a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license or provisional embalmer's license
Occ. Code	651.458	Made a distinction in providing funeral information to a customer
Occ. Code	651.459(a)(1)	Wilfully made a false statement on a death certificate, including forgery of a physician's signature; or a document required by this law/rule
Occ. Code	651.459(a)(2)	Engaged in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer
Occ. Code	651.459(a)(3)	Engaged in <i>dishonest conduct, wilful conduct</i> , in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
Occ. Code	651.459(a)(4)	Caused the execution of a document by the use of fraud, deceit, or misrepresentation
Occ. Code	651.459 (a)(6)	Misappropriated funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that created an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund
Occ. Code	651.459(c)	FDIC fails to provide a funeral director or an embalmer for direction or personal supervision for a first call
Occ. Code	651.460(a)(4)	Allowed the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407
Occ. Code	651.460(b)(2)	A funeral establishment or a person acting on behalf of the funeral establishment violated Chapter 193 or 361, Health and Safety Code
Occ. Code	651.460(b)(3)	A funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violated Chapter 154, Finance Code, or a rule adopted under that chapter
Occ. Code	651.460(b)(4)	Funeral establishment allows unlicensed person to perform work that requires license
Occ. Code	651.460(c)	Crematory allows unlicensed person to perform work that requires license
H&S	716.051	Cremates body without proper authorization

#### Class D

**1<sup>st</sup> Violation: Up to \$5,000 and/or sanction**

**2<sup>nd</sup> Violation: Up to \$5,000 and sanction**

**3<sup>rd</sup> Violation: Up to \$5,000 and sanction**

**4+ Violation: \$5,000 and Revocation**

Occ. Code	651.251	Engaged or professed to be engaged in business of funeral directing/embalming unless licensed by Commission
Occ. Code	651.351(a)	Funeral Establishment may not conduct business unless licensed
Occ. Code	651.352	Commercial embalming facility may not conduct business unless licensed



Occ. Code	651.451(1)	Presented to Commission license, certificate, registration, or diploma that was illegally or fraudulently obtained
Occ. Code	651.451(2)	Used fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination
Occ. Code	651.451(3)	Purchased, sold, bartered, or used, or offered to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the Commission for a license or registration issued under this chapter
Occ. Code	651.451(4)	Altered, with fraudulent intent, a license, registration, or certificate issued under Chapter 651 or a transcript of a license, registration, or certificate
Occ. Code	651.451(5)	Used a license, registration, certificate, or diploma issued or a transcript of a license, registration, certificate, or diploma that was fraudulently purchased, issued, counterfeited, or materially altered
Occ. Code	651.451(6)	Impersonated a funeral director, embalmer, or other person regulated under 651
Occ. Code	651.451(8)	Presented false certification of work done as a provisional license holder
Occ. Code	651.452(1)	Conviction of misdemeanor related to the practice of funeral directing or embalming or of a felony
Occ. Code	651.452(2)(3)	Ongoing/current substance abuse or determined by court to be of unsound mind
Occ. Code	651.459 (a)(7)	Performed acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performed acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts
Occ. Code	651.460 (a)(3)	Fails to comply with Order of Commission or pay administrative penalty
Occ. Code	651.656	Crematory may not conduct business unless licensed
H&S	716.004	Cremates body in 48 hours without permission

## Your policy has changed.

Your policy may now pay less if your home is damaged.

### Some items in your policy have changed from replacement cost coverage to actual cash value coverage.

There are two types of coverage for homes and personal items:

- ▶ **Replacement cost coverage:** The policy will pay to replace the damaged items based on current costs.
- ▶ **Actual cash value coverage:** The policy will **pay less** based on the item's characteristics, such as age and condition.

To know what your policy will cover, check your coverage and deductible amounts. The deductible is the amount you must pay before insurance will pay.

### Changing from replacement cost to actual cash value coverage can reduce what your policy will pay.

To see how the payment for a home insured for \$200,000 with a 2 percent (\$4,000) deductible might change, **check out the examples below. Your payment will probably be different.**

<b>Example: Actual cash value coverage</b>			
If it costs \$10,000 to replace the roof and the loss is covered at actual cash value:			
	<b>5-year-old roof</b>	<b>10-year-old roof</b>	<b>20-year-old roof</b>
Actual cash value of roof (example only)	\$8,500	\$7,000	\$4,000
Minus 2 percent deductible	- \$4,000	- \$4,000	- \$4,000
<b>Policy might pay</b>	<b>\$4,500</b>	<b>\$3,000</b>	<b>\$0</b>

<b>Example: Replacement cost coverage</b>	
If the loss is covered at replacement cost, the policy will pay the same amount for any age roof:	
Cost to replace roof	\$10,000
Minus 2 percent deductible	<u>- \$4,000</u>
<b>Policy might pay</b>	<b>\$6,000</b>

Figure: 30 TAC §115.421(8)(A)

Coating Type (Minus Water and Exempt Solvent)	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilogram of VOC per Gallon of Coating
Clear Coat or an Interior Protective Coating for Pails and Drums	4.3	0.52
Low-Bake Coating or Coating Using Air or Forced Air Driers	3.5	0.42
Extreme Performance Coating, Including Milling Maskants	3.5	0.42
All Other Coating Applications that Pertain to MMPP, Including High-Bake Coatings	3.0	0.36

Figure: 30 TAC §115.421(12)

Coating Type	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilograms of VOC per Liter of Coating
Primer or Primer Surfacer (minus water and exempt solvent)	5.0	0.60
Precoat (minus water and exempt solvent)	5.5	0.66
Pretreatment (minus water and exempt solvent)	6.5	0.78
Single-Stage Topcoats (minus water and exempt solvent)	5.0	0.60
Basecoat or Clearcoat Systems (minus water and exempt solvent)	5.0	0.60
Three-Stage Systems (minus water and exempt solvent)	5.2	0.62
Specialty Coatings (minus water and exempt solvent)	7.0	0.84
Sealers (minus water and exempt solvent)	6.0	0.72
Wipe-Down Solutions	1.4	0.17

Figure: 30 TAC Chapter 117--Preamble

	Expenses	Year 1	Year 2	Year 3	Year 4	Year 5
Small Business #1	Fuel meter, compliance testing & monitoring, and maintenance	(\$47,250)	(\$3,000)	(\$32,500)	(\$3,000)	(\$32,500)
Small Business #2 (Micro-business)	Fuel meter, compliance testing & monitoring, and maintenance	(\$7,875)	(\$500)	(\$5,375)	(\$500)	(\$5,375)

# 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.

## Capital Area Rural Transportation System

RFP for a General Contractor

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the construction of the CARTS's Eastside Bus Plaza in Austin, Texas.

RFP and construction documents will be available on the CARTS Website beginning at 2:00 p.m., Friday, October 11th, 2019, Go to: <http://ridecarts.weebly.com/procurement.html>, select the Eastside Bus Plaza link and follow the instructions.

A non-mandatory pre-proposal meeting will be held at CARTS Headquarters, located at 5300 Tucker Hill Lane, Cedar Creek, Texas 78612 at 10:00 a.m., October 18th, 2019.

The schedule is:

Friday, October 11 2:00 p.m. - RFP Documents available for download

Friday, October 18 10:00 a.m. - Pre-proposal conference at CARTS

Friday, October 25 2:00 p.m. - Deadline for proposal questions

Tuesday, October 29 Responses to questions posted on website

Friday, November 22 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-201903358

Dave Marsh

CARTS General Manager

Capital Area Rural Transportation System

Filed: September 18, 2019

## Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/23/19 - 09/29/19 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/23/19 - 09/29/19 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/19 - 10/31/19 is 5.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/19 - 10/31/19 is 5.25% for commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-201903340

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 17, 2019

## Credit Union Department

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 Premier America Credit Union, Chatsworth, California to expand its field of membership. The proposal would permit persons who live, work, attend school in Harris County, Texas to be eligible for membership in the credit union.

An application was received from ECU Credit Union, Seminole, Florida to expand its field of membership. The proposal would permit employees of Walgreens Boots who live or work in Texas to be eligible for membership in the credit union.

An application was received from Texell Credit Union, Temple, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Travis County, Texas to be eligible for membership in the credit union.

An application was received from Mobility Credit Union, Irving, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Hunt and Fannin Counties, Texas to be eligible for membership in the credit union.

An application was received from Memorial Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Harris County, Texas to be eligible for membership in the credit union.

An application was received from Mobility Credit Union, Irving, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Wise and Ellis Counties, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-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-201903354

John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: September 18, 2019



#### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications.

#### Application to Expand Field of Membership - Approved

Mobility CU #1, Irving, Texas - See *Texas Register* issue dated June 28, 2019.

Mobility CU #2, Irving, Texas - See *Texas Register* issue dated June 28, 2019.

Mobility CU #3, Irving, Texas - See *Texas Register* issue dated July 26, 2019.

Neighborhood CU, Dallas, Texas - See *Texas Register* issue dated March 28, 2019.

TRD-201903353  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: September 18, 2019



### Commission on State Emergency Communications

#### Notice Concluding Annual Review Of 1 TAC §255.4

The Commission on State Emergency Communications (CSEC) published notice of its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" in §255.4 in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4209). CSEC is required by Health and Safety Code §771.063 to adopt by rule the foregoing definitions and to annually review these definitions to address technical and structural changes in the provision of telecommunications and data services.

The Texas 9-1-1 Alliance (the Alliance), on behalf of its Health and Safety Code Chapter 772 Emergency Communication District members, filed comments. The Alliance proposed no changes to section 255.4, but rather identified and highlighted issues for the Commission to consider--including technological and structural changes in the delivery of communications--in advance of the 87th Texas Legislative session.

CSEC has determined not to propose amendments to the definitions in §255.4, and to leave in effect the rule as adopted by CSEC in September 2007. CSEC instructed and authorized staff to conduct a workshop(s) regarding disruptive changes in technology and the future funding of 9-1-1 service.

This concludes CSEC's annual review of §255.4.

TRD-201903349  
Patrick Tyler  
General Counsel  
Commission on State Emergency Communications  
Filed: September 17, 2019



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 28, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Angelina County Water Control and Improvement District Number 4; DOCKET NUMBER: 2017-0726-WQ-E; IDENTIFIER: RN102952223; LOCATION: Diboll, Angelina County; TYPE OF FACILITY: collection system; RULES VIOLATED: 30 TAC §217.36(h) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and TWC, §26.039(b), by failing to provide notification to the TCEQ of an accidental discharge which may cause pollution as soon as possible and not later than 24 hours after the occurrence; PENALTY: \$6,700; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Apex Blasting, Incorporated; DOCKET NUMBER: 2018-1084-IHW-E; IDENTIFIER: RN109912592; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: hydroblasting facility; RULES VIOLATED: 30 TAC §335.2(b) and §335.4, by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste (ISW) at an unauthorized facility, and failing to not cause, suffer, allow, or permit the unauthorized discharge of ISW; and 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: \$48,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BP AERO SERVICES, LLC; DOCKET NUMBER: 2019-0384-IHW-E; IDENTIFIER: RN106137821; LOCATION: Irving, Dallas County; TYPE OF FACILITY: aircraft repair station;

RULES VIOLATED: 30 TAC §335.9(a)(1)(B) and (2), by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or off-site, and failing to submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year; and 30 TAC §335.513(c) and 40 Code of Federal Regulations §262.40(c), by failing to maintain documentation of hazardous waste determinations and waste classifications; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Comanche; DOCKET NUMBER: 2019-0759-PWS-E; IDENTIFIER: RN101200962; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts at Site 2 during the fourth quarter of 2018; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM, based on the locational running annual average; PENALTY: \$742; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Sonora; DOCKET NUMBER: 2019-0417-PWS-E; IDENTIFIER: RN101384261; LOCATION: Sonora, Sutton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(2) and (3), by failing to notify the executive director (ED) in writing before the start of construction and upon completion of the water works project and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission; 30 TAC §290.41(c)(3)(A), by failing to furnish a copy of well completion data for review and approval by the ED prior to placing the two public drinking water wells at Love's Country Store 700 into service; 30 TAC §290.41(c)(3)(I), by failing to fine grade the well site so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well; 30 TAC §290.41(c)(3)(N), by failing to provide flow-measuring devices, located to facilitate daily reading, for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage readily available outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; 30 TAC §290.43(c)(3), by failing to cover the overflow's discharge opening with a gravity-hinged and weighted cover, an elastomeric duck-bill valve, or other approved device to prevent the entrance of insects and other nuisances, which closes automatically and fits tightly with no gap over 1/16 inches; 30 TAC §290.43(c)(4), by failing to provide all clearwells and water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines,

and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities in plain view of the public and which provides the name of the water supply and an emergency telephone number where a responsible official can be contacted; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$4,467; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: Dunn & Stone Builders, LLC; DOCKET NUMBER: 2019-0954-WQ-E; IDENTIFIER: RN110772704; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121 and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$938; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Friedman Recycling of El Paso, LP; DOCKET NUMBER: 2019-0755-MSW-E; IDENTIFIER: RN105231880; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: Happy Hoa Chuong, LLC; DOCKET NUMBER: 2019-0887-PWS-E; IDENTIFIER: RN102674827; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of nitrate sampling to the executive director (ED) for the January 1, 2017 - December 31, 2017, and January 1, 2018 - December 31, 2018, monitoring periods, and failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to provide the results of nitrate sampling to the ED for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: \$110; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: James Lake Midstream LLC; DOCKET NUMBER: 2019-0729-AIR-E; IDENTIFIER: RN107088759; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Standard Permit Registration Number 116553, Federal Operating Permit Number O3771/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum emissions rate; PENALTY: \$3,713; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Jim Eanes dba Midway Grocery; DOCKET NUMBER: 2019-0769-PST-E; IDENTIFIER: RN102965480; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: convenience

store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the underground storage tank (UST) registration and self-certification form; 30 TAC §334.10(b)(2), by failing to assure all UST recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1) and TCEQ Agreed Order Docket Number 2016-1508-PST-E, Ordering Provision Number 2.a.i., by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: \$42,750; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Kathie Lou Daniels; DOCKET NUMBER: 2019-0863-PWS-E; IDENTIFIER: RN101183077; LOCATION: Somerville, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to use an operator with a Class D or higher license for groundwater systems serving no more than 250 connections; PENALTY: \$637; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2019-0859-AIR-E; IDENTIFIER: RN107305922; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4445, Special Conditions Number 1, Federal Operating Permit Number O1911, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Oil Patch Group, Incorporated; DOCKET NUMBER: 2019-0823-PWS-E; IDENTIFIER: RN109985614; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(i)(2), by failing to obtain approval from the executive director for the equipment used to haul water when drinking water is distributed by tank truck or trailer; PENALTY: \$100; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2019-0166-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 3855B, Special Conditions Number 1, Federal Operating Permit Number O1324, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,213; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,085; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Perry Hostetler dba Allrounder Dairy; DOCKET NUMBER: 2019-0507-AGR-E; IDENTIFIER: RN102286325; LOCATION: Pickton, Hopkins County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.39(b)(2), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG921282, Part III, A.6(f)(6), 10(a)(2), by failing to ensure that the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event; and 30 TAC §321.39(c)(1), and TPDES General Permit Number TXG921282, Part III, 10(e), by failing to remove sludge in accordance with the design schedule for cleanout; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: SPIDLE & SPIDLE, INCORPORATED; DOCKET NUMBER: 2018-0481-PST-E; IDENTIFIER: RN100519644; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$19,231; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-2506; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Syed Amjad Ali Shah dba MN Grocery & Hardware; DOCKET NUMBER: 2019-0837-PST-E; IDENTIFIER: RN102012705; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank (UST) corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$6,517; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Trent Water Works, Incorporated; DOCKET NUMBER: 2019-0816-PWS-E; IDENTIFIER: RN101202752; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) and receive an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(b)(2) and (e)(3), by failing to provide treatment facilities for the groundwater supply for the purpose of meeting TCEQ drinking water standards; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the wells remain in service; PENALTY: \$314; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201903332



Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 17, 2019



#### Enforcement Orders

An agreed order was adopted regarding B & W United, LLC dba Cash & Carry, Docket No. 2018-0789-PST-E on September 17, 2019, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercuriuff II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 5510 Acorn, L.L.C., Docket No. 2018-0820-PWS-E on September 17, 2019, assessing \$150 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.

TRD-201903356  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 18, 2019



#### Notice of Correction to Agreed Order Number 16

In the April 19, 2019, issue of the *Texas Register* (44 TexReg 2072), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 16, for Motiva Enterprises LLC. The error is as submitted by the commission.

The reference to the Supplemental Environmental Project Offset Amount should be corrected to read: "\$91,157."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201903331  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 17, 2019



Notice of Hearing Markum Land Properties, LLC:  
SOAH Docket No. 582-20-0152; TCEQ Docket No. 2019-0666-MWD; Permit No. WQ0015697001

#### APPLICATION.

Markum Land Properties, LLC, 17018 Interstate 20, Cisco, Texas 76437, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015697001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. TCEQ received this application on June 15, 2018.

The facility will be located approximately 0.46 mile south of the intersection of Interstate 20 and Markum Ranch Road, on the east side, in Tarrant County, Texas 76126. The treated effluent will be discharged a pipe to a natural drainage way; thence to an unnamed

tributary; thence to Walnut Creek; thence to Mary's Creek; thence to Clear Fork Trinity River Below Benbrook Lake in Segment 0829 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the natural drainageway, limited aquatic life use for the unnamed tributary, and high aquatic life use for Walnut Creek. The designated uses for Segment No. 0829 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Walnut Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: [www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.688055&lng=-97.516944&zoom=13&type=r](http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.688055&lng=-97.516944&zoom=13&type=r). For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Tarrant County Clerk's Office, 100 West Weatherford Street, Suite 130, Fort Worth, Texas.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

**10:00 a.m. - October 30, 2019**

**William P. Clements Building  
300 West 15th Street, 4th Floor  
Austin, Texas 78701**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on August 15, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

## INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained from Markum Land Properties, LLC at the address stated above or by calling Mr. Kyle Wilks at (817) 850-3600.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: September 13, 2019

TRD-201903352

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2019



### Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 115 and 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality will offer a public hearing in Houston on October 14, 2019, at 2:00 p.m. at the Texas Department of Transportation auditorium located at 7600 Washington Avenue. The hearing is offered to receive testimony regarding proposed air quality rules and state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas from moderate to serious nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by the United States Environmental Protection Agency (EPA). The hearing for the proposed revisions is required by Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the EPA concerning SIPs.

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; however, commission staff members will be available to discuss the proposals 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

The proposed rulemakings concern amendments to 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds (Project No. 2019-075-115-AI) and 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds (Project No. 2019-074-117-AI) to implement reasonably available control technology requirements. In addition, the proposed amendments to 30 TAC Chapter 115 would correct errors, and the proposed amendments to 30 TAC Chapter 117 would clarify applicability for exempt stationary diesel and dual-fuel engines and update emission test methods.

Proposed revisions to the SIP include a demonstration that the HGB (Project No. 2019-077-SIP-NR) ozone nonattainment area will attain the 2008 eight-hour ozone NAAQS and a demonstration that the DFW and HGB areas will meet emission reduction milestone requirements

that constitute reasonable further progress toward attainment (Project No. 2019-079-SIP-NR).

Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/hgb/hgb-latest-ozone>.

The comment period for these revisions closes October 28, 2019. Written comments will be accepted through the eComments system at <https://www6.tceq.texas.gov/rules/ecomments/>. For additional submission methods, please contact the project manager for the proposed rule or SIP revision for: Project No. 2019-075-115-AI, contact Graham Bates at (512) 239-2606; Project No. 2019-074-117-AI, contact Javier Galván at (512) 239-1492; Project No. 2019-077-SIP-NR, contact Alison Stokes at (512) 239-4902; and for Project No. 2019-079-SIP-NR, contact Denine Calvin at (512) 239-0613.

TRD-201903240

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2019



### Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 115 And 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality will offer a public hearing in Arlington on October 17, 2019, at 2:00 p.m. at the Arlington City Council Chambers located at 101 Abram Street. The hearing is offered to receive testimony regarding proposed air quality rules and state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas from moderate to serious nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by the United States Environmental Protection Agency (EPA). The hearing for the proposed revisions is required by Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the EPA concerning SIPs.

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; however, commission staff members will be available to discuss the proposals 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

The proposed rulemakings concern amendments to 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds (**Project No. 2019-075-115-AI**) and 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds (**Project No. 2019-074-117-AI**) to implement reasonably available control technology requirements. In addition, the proposed amendments to 30 TAC Chapter 115 would correct errors, and the proposed amendments to 30 TAC Chapter 117 would clarify applicability for exempt stationary diesel and dual-fuel engines and update emission test methods.

Proposed revisions to the SIP include a demonstration that the DFW (Project No. 2019-078-SIP-NR) ozone nonattainment area will attain the 2008 eight-hour ozone NAAQS and a demonstration that the DFW and HGB areas will meet emission reduction milestone requirements that constitute reasonable further progress toward attainment (Project No. 2019-079-SIP-NR).

Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone>.

The comment period for these revisions closes October 28, 2019. Written comments will be accepted through the eComments system at <https://www6.tceq.texas.gov/rules/ecomments/>. For additional submission methods, please contact the project manager for the proposed rule or SIP revision for: **Project No. 2019-075-115-AI**, contact Graham Bates at (512) 239-2606; **Project No. 2019-074-117-AI**, contact Javier Galván at (512) 239-1492; **Project No. 2019-078-SIP-NR**, contact Kristin Jacobsen at (512) 239-4907; and for **Project No. 2019-079-SIP-NR**, contact Denine Calvin at (512) 239-0613.

TRD-201903241  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: September 13, 2019



#### Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) will conduct public hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046.

Annual public hearings are held for the Edwards Aquifer Protection Program and the TCEQ rules, found at 30 Texas Administrative Code, Chapter 213, which regulate development over the delineated contributing, recharge and transition zones of the Edwards Aquifer. These annual public hearings assist the commission in its shared responsibility with local governments, such as cities, counties and groundwater conservation districts, to protect the water quality of the aquifer. The TCEQ is specifically seeking feedback on the following topics related to the Edwards Aquifer Protection Program:

- Revisions to the Edwards Aquifer Protection Program technical guidance manual, RG-348, including the method for calculating removal of total suspended solids;
- Review of innovative technology applications;
- Regulation of aggregate production operations (APOs) located over the Edwards Aquifer; and
- Compliance monitoring of plan-related best management practices following installation.

The hearings will be held at the following times and locations:

**Monday, October 28, 2019, at 2:00 p.m. at the Tesoro Building, Alamo Area Council of Governments, Room 1A, 8700 Tesoro Drive, Suite 100, San Antonio; and**

**Tuesday, October 29, 2019, at 1:30 p.m. at the TCEQ Park 35 Office Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin.**

These hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. There will be no open discussion during the hearings; however, agency staff members will be available to answer questions 30 minutes prior to and 30 minutes after the conclusion of the hearing. Registration will begin 30 minutes prior to the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the Austin hearing should contact the Office of Administrative Services Facilities Liaison at (512) 239-0080. Persons requesting accommodations for the San Antonio hearing should contact Ms. Anne Ruthstrom at (512) 239-1336. Requests should be made as far in advance as possible.

Written comments should reference the Edwards Aquifer Protection Program and may be sent to Ms. Anne Ruthstrom, Texas Commission on Environmental Quality, Program Support Section, MC 174, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-2249, or e-mailed to [anne.ruthstrom@tceq.texas.gov](mailto:anne.ruthstrom@tceq.texas.gov). Comments must be received by **5:00 p.m., October 29, 2019**. For further information or questions concerning these hearings, please contact Ms. Ruthstrom, or visit <https://www.tceq.texas.gov/permitting/eapp/history.html>.

TRD-201903335  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: September 17, 2019



#### General Land Office

#### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 26, 2019 to September 13, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 20, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, October 20, 2019.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Galveston County

**Location:** The project site is located along the beach-front of Bolivar Peninsula, in Galveston County, Texas.

**Latitude & Longitude (NAD 83):** Little Beach: Begin 29.367065, -94.754760; End 29.369902, -94.750989. Rest of Project Area: Begin 29.382358, -94.722974; End 29.555957, -94.370668.

**Project Description:** The applicant proposes to perform mechanized beach maintenance associated with the removal of Sargassum and

other vegetation-based debris along approximately 25 miles of beach frontage. Removal will be conducted with tractor-towed three-point agricultural rakes, tractor-towed beach cleaning/sand sifting machines, front end loaders, and/or other bladed machinery. These activities will involve the discharge of fill material due to more than minimal incidental fallback into the Gulf of Mexico. The Sargassum and other debris will be relocated on the upper beach in non-jurisdictional areas near the base or south toe of dunes to naturally decompose.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00388. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 19-1427-F1

**Applicant:** City of Beaumont

**Location:** The project site is located in the Neches River, approximately 1-mile south of the I-10 bridge, within Jefferson County, Texas.

**Latitude & Longitude (NAD 83):**

**Project Description:** The applicant proposes to discharge 7,521 cubic yards of rip-rap into the 0.75 acres of the Neches River and 12,332 cubic yards of dredge material into Dredge Material Placement Area 25, to facilitate the reconstruction of the Riverfront Park shoreline along the Neches River. Anchored sheet pile bulkhead will be installed with rip-rap toe-walls in some areas. The total length of shoreline reconstruction is 2,197 linear feet. The purpose of the proposed project is to restore the shoreline from damages that resulted from Hurricane Harvey.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2010-00630. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 19-1411-F1

FEDERAL AGENCY ACTIVITIES:

**Applicant:** Bureau of Ocean Energy Management (BOEM)

**Project Description:** BOEM proposes to offer for lease in proposed Gulf of Mexico (GOM) Region-wide Lease Sale 254 all available unleased blocks in the Western and Central Planning Areas (WPA and CPA, respectively), and a small portion of the Eastern Planning Area (EPA) not subject to Congressional moratorium. The proposed GOM region-wide lease sale area includes all available unleased blocks within the WPA, CPA, and EPA with the exception of whole blocks and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary.

The proposed region-wide lease sale area encompasses about 95 million acres. The estimated amount of resources projected to be developed as a result of this proposed region-wide lease sale is 0.211-1.118 billion barrels of oil and 0.547-4.424 trillion cubic feet of gas.

**CMP Project No:** 20-1000-F4

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien P.O. Box

12873, Austin, Texas 78711-2873, or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201903359

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: September 18, 2019

## Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Community Hospice

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 2, 2019, at 9:30 a.m., to receive public comments on proposed Medicaid Community Hospice payment rates.

The public hearing will be held in the Public Hearing Room of the Brown-Healy Building located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. HHSC also will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** HHSC proposes to increase payment rates for Medicaid Community Hospice for routine home, continuous home, inpatient respite, and general inpatient care services to be effective October 1, 2019.

**Methodology and Justification.** The proposed payment rates were determined in accordance with the hospice reimbursement methodology located at the Code of Federal Regulations, Title 42, Part 418, Subpart G.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/long-term-services-supports/hospice> on or after September 20, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). The briefing package will also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [LTSS@hhsc.state.tx.us](mailto:LTSS@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Healy Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

*Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512)*

730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201903341

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 17, 2019



### Proposed Medicaid Payment Rate for the Truman W. Smith Pediatric Care Facility

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing October 2, 2019, at 9:00 a.m., to receive comment on Proposed Medicaid Payment Rate for the Truman W. Smith Pediatric Care Facility.

The public hearing will be held in the Brown-Heatly Building Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas, 78751. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing. Persons watching remotely can submit written comments. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and it will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** HHSC proposes to increase the daily payment rate for all pediatric care facility special reimbursement class services to \$296.63, effective retroactive to September 1, 2019. The current payment rate is \$291.17 per day.

**Methodology and Justification.** The proposed payment rate was calculated in accordance with Title 1 of the Texas Administrative Code §355.307(c), which addresses the reimbursement methodology for the pediatric care facility special reimbursement class.

**Briefing Package.** A briefing package describing the proposed payment rate will be available at <http://rad.hhs.texas.gov/rate-packets> on September 20, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). The briefing package will also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

*Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so that appropriate arrangements can be made.*

TRD-201903348

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 17, 2019



### Public Notice: Value-Based Supplemental Rebate Agreements

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 19-0025 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2019.

This amendment proposes to revise the Texas State plan to authorize the state to negotiate supplemental rebate agreements for pharmaceuticals involving value-based purchasing arrangements with drug manufacturers. There is no fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Courtney Pool, State Plan Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 424-6889; by facsimile at (512) 730-7472; or by email at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201903227

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 12, 2019



### Department of State Health Services

#### Amendment Adding a Separate Listing for Noroxymorphone in Schedule II

The Drug Enforcement Administration issued a rule amending the Code of Federal Regulations (CFR), specifically section 1308.12(b)(1), by adding a separate listing for noroxymorphone. Noroxymorphone already is included as a Schedule II controlled substance because 21 CFR 1308.12(b)(1) controls any salt, compound, derivative, or preparation of opium and opiates. Accordingly, noroxymorphone has been controlled as a derivative of the listed substances and this rule will not result in adding any new substances into the schedules. Listing noroxymorphone does not alter its status as a Schedule II controlled substance. This rule was published in the *Federal Register*, Volume 84, Number 159, pages 41913-41914. The effective date of the rules is August 16, 2019. This action is taken for the following reason:

-DEA is amending the CFR to reflect the current practice of using the DEA Controlled Substances Code Number 9668 for noroxymorphone.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that noroxymorphone be listed separately from other substances in Schedule II.

-Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemide, naloxegol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

- (1-1) Codeine;
- (1-2) Dihydroetorphine;
- (1-3) Ethylmorphine;
- (1-4) Etorphine hydrochloride;
- (1-5) Granulated opium;
- (1-6) Hydrocodone;
- (1-7) Hydromorphone;
- (1-8) Metopon;
- (1-9) Morphine;
- \*(1-10) Noroxymorphone;
- (1-11) Opium extracts;
- (1-12) Opium fluid extracts;
- (1-13) Oripavine;
- (1-14) Oxycodone;
- (1-15) Oxymorphone;
- (1-16) Powdered opium;
- (1-17) Raw opium;
- (1-18) Thebaine; and,
- (1-19) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by

Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or

(4-2-2) ioflupane.

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Changes indicated by an \*

TRD-201903360

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: September 18, 2019



Licensing Actions for Radioactive Materials

During the first half of August, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
San Antonio	BTDI JV L.L.P. dba Touchstone Imaging Stone Oak	L07013	San Antonio	00	08/06/19
Sherman	M. Asad Karim M.D., P.A.	L07012	Sherman	00	08/06/19
Throughout TX	Pinnacleis Inspection L.L.C.	L07014	Pasadena	00	08/08/19

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	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	167	08/14/19
Austin	ARA St. David's Imaging L.P.	L05862	Austin	96	08/09/19
Austin	Tri County Clinical dba Seton Heart Institute	L06598	Austin	08	08/06/19
Baytown	Exxon Mobil Corporation dba Exxonmobil Chemical Company	L01135	Baytown	90	08/13/19
Borger	WRB Refining L.P.	L02480	Borger	66	08/01/19
Clifton	Bosque County Hospital District dba Goodall - Witcher Hospital	L06574	Clifton	04	08/07/19
Cypress	Cypress Cardiology P.A.	L04353	Cypress	29	08/02/19
Dallas	Sofie Co.	L06174	Dallas	25	08/02/19
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	49	08/09/19
Fort Worth	XS Sight Systems Inc.	L06946	Fort Worth	02	08/05/19
Harlingen	Harlingen Medical Center	L05587	Harlingen	11	08/14/19
Houston	Shell Chemical L.P.	L02116	Houston	59	08/12/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	One Step Diagnostic Inc.	L05990	Houston	17	08/07/19
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	48	08/08/19
Houston	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06944	Houston	04	08/14/19
La Grange	St. Marks Medical Center	L03572	La Grange	32	08/01/19
La Porte	The Chemours Company F.C., L.L.C.	L06683	La Porte	05	08/15/19
Marble Falls	Scott & White Hospital – Marble Falls dba Baylor Scott & White Medical Center – Marble Falls	L06722	Marble Falls	07	08/13/19
Nacogdoches	TH Healthcare Ltd. A Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	56	08/06/19
Nacogdoches	Shared Medical Services Inc.	L06142	Nacogdoches	30	08/02/19
Pasadena	Pasadena Refining System Inc.	L01344	Pasadena	37	08/12/19
Plano	Orano Med L.L.C.	L06781	Plano	15	08/13/19
Port Neches	TPC Group L.L.C.	L06106	Port Neches	07	08/07/19
Round Rock	St. David's Healthcare Partnership L.P., L.L.P.	L03469	Round Rock	61	08/14/19
San Antonio	South Texas Radiology Imaging Services	L00325	San Antonio	247	08/05/19
San Antonio	Texas Oncology P.A.	L06747	San Antonio	10	08/13/19
Throughout TX	Varco L.P.	L00287	Houston	154	08/15/19
Throughout TX	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	109	08/07/19
Throughout TX	Cardno USA Inc.	L06796	Houston	05	08/02/19
Throughout TX	Keane Frac L.P.	L06829	Houston	08	08/15/19
Throughout TX	Ignite Inspection Group L.L.C.	L07010	Houston	01	08/13/19
Throughout TX	Humble	L05447	Humble	12	08/07/19
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	09	08/02/19
Throughout TX	Ace NDT	L06595	Perryton	22	08/07/19
Throughout TX	Oliden Technology L.L.C.	L06977	Stafford	02	08/08/19
Tyler	Delek Refining Ltd.	L02289	Tyler	29	08/02/19
Tyler	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	88	08/14/19
Webster	David S. Hamer M.D., P.A. dba Southeast Houston Cardiology	L05364	Webster	15	08/12/19
Webster	Texas Oncology P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	09	08/12/19

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
Dumas	Moore County Hospital District dba Memorial Hospital	L03540	Dumas	32	08/08/19

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
Austin	Applied Nanotech Inc.	L06277	Austin	09	08/05/19
College Station	College Station	L04681	College Station	50	08/12/19
Perryton	Ochiltree County Hospital District dba Ochiltree General Hospital	L06006	Perryton	05	08/15/19
San Antonio	Jeremy Nyle Wiersig M.D., P.A. dba Concord Imaging	L05915	San Antonio	11	08/08/19
Throughout TX	Auditing Testing Consulting L.L.C.	L06913	Channelview	02	08/01/19



TRD-201903248  
Barbara L. Klein  
General Counsel  
Department of State Health Services  
Filed: September 13, 2019

◆ ◆ ◆  
Licensing Actions for Radioactive Materials

During the second half of August, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Frisco	Texas Health Hospital Frisco	L07017	Frisco	00	08/22/19
Pasadena	Karan S Bhalla M.D., P.L.L.C.	L07018	Pasadena	00	08/23/19
Throughout TX	Ecoserv Permian L.L.C.	L07020	Big Spring	00	08/27/19
Throughout TX	GTS Inc. dba Geotechnical & Testing Services Inc.	L07019	Farmers Branch	00	08/28/19
Throughout TX	Phoenix Industrial Services 1 L.P.	L07015	La Porte	00	08/16/19
Throughout TX	Chempro Technologies Inc. dba Environics USA Inc.	L07016	Round Rock	00	08/19/19

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	Amarillo Medical Specialists L.L.P.	L05525	Amarillo	13	08/20/19
Arlington	The University of Texas at Arlington	L00248	Arlington	61	08/26/19
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	120	08/23/19
Austin	Austin Heart P.L.L.C.	L04623	Austin	99	08/15/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	31	08/19/19
Austin	Thermo Fisher Scientific	L06813	Austin	01	08/16/19
Baytown	Raven Butene 1 L.L.C.	L07009	Baytown	01	08/20/19
Conroe	Adnan Afzal M.D., P.A. dba Healing Hearts	L06071	Conroe	15	08/16/19
Corpus Christi	Christus Spohn Health System Corporation dba Christus Spohn Hospital Corpus Christi – Shoreline & South	L02495	Corpus Christi	138	08/28/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Cypress	KPH Consolidation Inc. dba HCA Houston Healthcare North Cypress	L06988	Cypress	03	08/29/19
Dallas	Heartplace P.A.	L04607	Dallas	71	08/28/19
Fort Worth	Texas Christian University	L01096	Fort Worth	51	08/30/19
Fort Worth	National Inspection Services L.L.C.	L05930	Fort Worth	48	08/20/19
Gonzales	Gonzales Healthcare System dba Memorial Hospital	L03473	Gonzales	21	08/20/19
Houston	American Diagnostic Tech. L.L.C.	L05514	Houston	142	08/21/19
Kingwood	Lieber-Moore Cardiology Associates dba Texas Cardiology Associates of Houston	L04622	Kingwood	21	08/26/19
Longview	Christus Good Shepherd Medical Center dba Christus Good Shepherd Medical Center – Longview	L06902	Longview	04	08/23/19
Marshall	Christus Good Shepherd Medical Center	L02572	Marshall	44	08/26/19
Mount Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mount Pleasant	54	08/28/19
New Braunfels	Resolute Hospital Company L.L.C.	L06632	New Braunfels	07	08/26/19
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	374	08/26/19
Sugar Land	Methodist Health Centers dba Houston Methodist Sugar Land Hospital	L05788	Sugar Land	48	08/20/19
Throughout TX	Chevron Phillips Chemical Company L.P.	L00962	Baytown	50	08/16/19
Throughout TX	Fugro Consultants Inc.	L03461	Dallas	32	08/20/19
Throughout TX	Advanced Nuclear Consultants L.L.C.	L06167	Houston	10	08/21/19
Throughout TX	Amerapex	L06417	Houston	19	08/16/19
Throughout TX	CBS Partners L.L.C.	L06994	Ingleside	02	08/21/19
Throughout TX	Mistras Group Inc.	L06369	La Porte	29	08/23/19
Throughout TX	Total NDT L.L.C.	L06736	Longview	04	08/27/19
Throughout TX	Crossbridge Compliance L.L.C.	L06904	Longview	06	08/28/19
Throughout TX	Techcorr USA Management L.L.C.	L05972	Pasadena	129	08/21/19
Throughout TX	NRG Manufacturing Inc.	L06550	Tomball	03	08/22/19
Throughout TX	Pumpco Energy Services Inc.	L06507	Valley View	22	08/27/19

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
Abilene	Step Energy Services Holdings Ltd.	L06157	Abilene	11	08/16/19
Corsicana	Guardian Industries L.L.C.	L05213	Corsicana	11	08/19/19
Harlingen	Valley Cancer Associates P.A.	L06225	Harlingen	01	08/19/19
Throughout TX	USA Environment L.P.	L05616	Deer Park	10	08/15/19
Throughout TX	Wrangler Wireline Inc.	L05404	Sour Lake	07	08/27/19
Tomball	Mustafa Mandviwala M.D., P.A.	L05296	Tomball	08	08/26/19

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
Houston	1960 Family Practice P.A. dba 1960 Digital Imaging	L06638	Houston	02	08/22/19

TRD-201903254

Barbara L. Klein  
General Counsel  
Department of State Health Services  
Filed: September 13, 2019

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**Texas Department of Insurance**

**Company Licensing**

Application to do business in the state of Texas for Society Insurance, A Mutual Company, a foreign fire and/or casualty company. The home office is in Fond du Lac, Wisconsin.

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-201903357  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: September 18, 2019

◆ ◆ ◆  
**Notice of Public Hearing**

TWIA Adjustments to Maximum Liability Limits

**TWIA Adjustments to Maximum Liability Limits**

**DOCKET NO. 2815**

The Texas Windstorm Insurance Association (TWIA) made its annual filing for proposed adjustments to its maximum liability limits on August 14, 2019. The adjustments would apply to policies covering residential dwellings and individually owned townhouses and associated contents; contents of apartments, condominiums or townhouses; and commercial structures and associated contents, effective January 1, 2020, for new and renewal policies. **This filing is not a rate filing.**

By statute, the proposed adjustments are subject to review by the Commissioner of Insurance. Texas Insurance Code §2210.504 requires the Commissioner to approve, disapprove, or modify TWIA's proposed adjustments to the maximum liability limits.

The Commissioner will hold a public hearing to consider TWIA's petition for adjustments to maximum liability limits under Docket No. 2815. The hearing will begin at 10:00 a.m. central time, October 7, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

**How to review, request copies, and comment:**

To **review** or get copies of TWIA's proposed adjustments to its maximum liability limits filings:

**--Online:** Go to [tdi.texas.gov/submissions/indextwia.html#limit](http://tdi.texas.gov/submissions/indextwia.html#limit)

**--In person:** You can review the filing in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701 during regular business hours.

**--By mail:** Write to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TDI requests written comments on or before 5:00 p.m., central time, on October 7, 2019. You may also submit written and oral comments and exhibits at the public hearing. Please include the docket number on

any comments or exhibits. Submit your comments by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to ChiefClerk@tdi.texas.gov.

TRD-201903351  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: September 18, 2019

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**Texas Department of Licensing and Regulation**

**Notice of Applications for Motor Fuels Stakeholder Workgroup**

The Texas Department of Licensing and Regulation (Department) is accepting applications to fill twelve positions on the Motor Fuels Workgroup (Workgroup) established by Senate Bill 2119 of the 86th Legislative Session. The purpose of the Workgroup is to provide input, advice, and recommendations to the Texas Department of Licensing and Regulation and Texas Department of Agriculture on the orderly transfer of powers, duties, functions, programs, and activities related to the motor fuel quality and metering program. Service as a Workgroup member is voluntary, and compensation is not authorized by law. This announcement is for:

**Two Licensed Service Companies or their representative:**

**--one from an area with a population of 250,000 or greater;**

**--one from an area with a population of less than 250,000.**

**Three Convenience Store Operators or their representative:**

**--one operator with 100 or fewer motor fuel pump devices (meters);**

**--one operator with greater than 100 motor fuel pump devices (meters), but less than 1,000 motor fuel pump devices (meters); and**

**--one with 1,000 or more motor fuel pump devices (meters).**

**One bulk meter operator or their representative.**

**One liquid propane gas operator or their representative.**

**Two Fuel Marketers (includes suppliers, distributors or wholesalers) or their representative.**

**One Law Enforcement Agency Representative experienced in skimmer investigations.**

**Two Financial Institution representatives or Credit Card issuer representatives.**

The Workgroup will consist of a total of fifteen members appointed by the Executive Director of the Department. Members' terms expire on October 1, 2020. A member of the Department staff will serve as the Presiding Officer of the Workgroup. The Workgroup is composed of the following members:

Two Licensed Service Companies or their representative:

**--one from an area with a population of 250,000 or greater;**

**--one from an area with a population of less than 250,000.**

Three Convenience Store Operators or their representative:

**--one operator with 100 or fewer motor fuel pump devices (meters);**

**--one operator with greater than 100 motor fuel pump devices (meters), but less than 1,000 motor fuel pump devices (meters); and**

**--one with 1,000 or more motor fuel pump devices (meters).**

- One bulk meter operator or their representative.
- One liquid propane gas operator or their representative.
- Two Fuel Marketers (includes suppliers, distributors or wholesalers) or their representative.
- One Department staff member.
- One Law Enforcement Agency Representative experienced in skimmer investigations.
- Two Financial Institution representatives or Credit Card issuer representatives.
- One Ex Officio member from Texas Department of Agriculture.
- One Ex Officio member from Texas Attorney General.

Interested persons should complete an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202 or by e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**This is not a paid position and there is no compensation or reimbursement for serving on the Workgroup.**

TRD-201903350  
 Brian E. Francis  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Filed: September 17, 2019



**Texas Lottery Commission**

Scratch Ticket Game Number 2181 "WINTER WINNINGS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2181 is "WINTER WINNINGS". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2181 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2181.

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, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 2X SYMBOL, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$250,000.

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. 2181 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
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
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
61	SXON
62	SXTO
2X SYMBOL	WINX2
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$250,000	250TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2181), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2181-0000001-001.

H. Pack - A Pack of the "WINTER WINNINGS" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning 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 "WINTER WINNINGS" Scratch Ticket Game No. 2181.

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 "WINTER WINNINGS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ninety-nine (99) Play Symbols. GAME 1: The player scratches the entire BOW play area to reveal 4 WINNING NUMBERS Play Symbols and 10 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. GAMES 2-26: The player scratches each of the 25 ORNAMENT play areas to reveal 25 GAMES. If the player reveals 2 matching numbers in the same GAME, the player wins the prize for that GAME. 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 ninety-nine (99) 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 ninety-nine (99) 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 ninety-nine (99) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ninety-nine (99) 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. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-five (35) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$10,000 and \$250,000 will each appear at least once, except on Tickets winning thirty-four (34) times or more, with respect to other parameters, play action or prize structure.



E. GENERAL: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. GAME 1: The "2X" (WINX2) Play Symbol will only appear in GAME 1.

G. GAME 1: GAME 1 can win up to ten (10) times.

H. GAME 1: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

I. GAME 1: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

J. GAME 1: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. GAME 1: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

L. GAME 1: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 10 and \$10, 20 and \$20, 40 and \$40, and 50 and \$50).

M. GAME 1: The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

N. GAME 1: The "2X" (WINX2) Play Symbol will never appear more than once on a Ticket.

O. GAME 1: The "2X" (WINX2) Play Symbol will DOUBLE the prize and will win as per the prize structure.

P. GAME 1: The "2X" (WINX2) Play Symbol will only appear as a YOUR NUMBERS Play Symbol.

Q. GAMES 2-26: On all Tickets, a Prize Symbol will not appear more than six (6) times, except as required by the prize structure to create multiple wins.

R. GAMES 2-26: GAMES 2-26 can win up to twenty-five (25) times: once in each GAME.

S. GAMES 2-26: On winning and Non-Winning Tickets, all non-winning Play Symbols will be different.

T. GAMES 2-26: A non-winning Play Symbol will never match a winning Play Symbol.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "WINTER WINNINGS" Scratch Ticket Game prize of \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINTER WINNINGS" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, 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 "WINTER WINNINGS" 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 "WINTER WINNINGS" 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 "WINTER WINNINGS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified

in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the

Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 4,560,000 Scratch Tickets in Scratch Ticket Game No. 2181. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2181 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	364,800	12.50
\$20	729,600	6.25
\$40	79,800	57.14
\$50	51,870	87.91
\$100	35,948	126.85
\$200	12,160	375.00
\$500	836	5,454.55
\$1,000	100	45,600.00
\$10,000	10	456,000.00
\$250,000	5	912,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.58. 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. 2181 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. 2181, 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-201903337

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 17, 2019



Scratch Ticket Game Nunner 2182 "FROSTY FUN"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2182 is "FROSTY FUN". The play style is "match 3 of X".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2182 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2182.

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:

\$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and SNOWFLAKE SYMBOL.

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. 2182 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
SNOWFLAKE SYMBOL	WINX2

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2182), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2182-0000001-001.

H. Pack - A Pack of the "FROSTY FUN" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be the top page; Tickets 006 to 010 on the next page.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "FROSTY FUN" Scratch Ticket Game No. 2182.

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 "FROSTY FUN" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose six (6) Play Symbols. If the player reveals 3 matching prize amounts, the player wins the that amount. If the player reveals 2 matching prize amounts and a SNOWFLAKE Play Symbol, the player wins DOUBLE that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly six (6) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the six (6) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Prize Symbol will not appear more than three (3) times on any Ticket.

D. A Ticket will not contain two (2) sets of three (3) matching Prize Symbols.

E. Winning Tickets will contain three (3) matching Prize Symbols or two (2) matching Prize Symbols and a "SNOWFLAKE" (WINX2) Play Symbol.

F. On winning Tickets, all non-winning Prize Symbols will be different from the winning Prize Symbols.

G. Non-Winning Tickets will never have more than two (2) matching Prize Symbols.

H. The "SNOWFLAKE" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

I. The "SNOWFLAKE" (WINX2) Play Symbol will never appear more than once on a Ticket.

J. The "SNOWFLAKE" (WINX2) Play Symbol will never appear on a Ticket that wins with three (3) matching Prize Symbols.

K. The "SNOWFLAKE" (WINX2) Play Symbol will never appear on a Ticket that has more than one (1) pair of matching Prize Symbols.

### 2.3 Procedure for Claiming Prizes.

A. To claim an "FROSTY FUN" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00 or \$100, 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 \$40.00, \$50.00 or \$100 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 an "FROSTY FUN" Scratch Ticket Game prize of \$1,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "FROSTY FUN" 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 "FROSTY FUN" 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 "FROSTY FUN" 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 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2182. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2182 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,020,000	8.82
\$2	540,000	16.67
\$4	250,000	36.00
\$5	80,000	112.50
\$8	40,000	225.00
\$10	30,000	300.00
\$20	40,000	225.00
\$40	4,250	2,117.65
\$50	1,000	9,000.00
\$100	2,250	4,000.00
\$1,000	35	257,142.86

\*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 4.48. 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. 2182 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. 2182, 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-201903355  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 18, 2019



**North Central Texas Council of Governments**

Call for Projects for the North Texas Freight Terminal Electrification Project

The North Central Texas Council of Governments (NCTCOG), under the Environmental Protection Agency's (EPA) Clean Diesel Funding Assistance Program, plans to offer approximately \$1 million in grant

funding for installing EPA verified electrified parking spaces and related infrastructure including electric power kits and power monitoring equipment at freight terminals and distribution centers that primarily receive heavy-duty trucks with Transport Refrigeration Units in the Dallas-Fort Worth (DFW) ten-county ozone nonattainment region. Eligible projects may receive federal funds for up to 30 percent of total project costs for electrified parking spaces, power monitoring equipment and electric power kits. Selected subrecipients will be responsible for: following all applicable federal procurement guidelines; meeting cost-share requirements; and granting appropriate security interest to NCTCOG for all grant funded vehicles and/or equipment. NCTCOG may consider applications received in response to this solicitation for future funding opportunities or programs. More information and application materials for this Call for Projects can be obtained online at [www.nctcog.org/aqfunding](http://www.nctcog.org/aqfunding).

Application materials must be received no later than 5:00 p.m., Central Standard Time (CST), on Friday, December 13, 2019, to Huong Duong, Air Quality Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011.

NCTCOG encourages participation by minority business enterprises and women's business enterprises, and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201903325  
 R. Michael Eastland  
 Executive Director  
 North Central Texas Council of Governments  
 Filed: September 16, 2019



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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