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THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0331-KP

Requestor:

The Honorable Mark A. Gonzales

Nueces County District Attorney

901 Leopard, Room 206

Corpus Christi, Texas 78401

Re: Whether in misdemeanor cases the trial court has authority to issue a capias on the filing of an information or complaint under article 23.04, Code of Criminal Procedure, but before commitment or bail under article 23.01, Code of Criminal Procedure (RQ-0331-KP)

Briefs requested by March 9, 2020

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

TRD-202000565

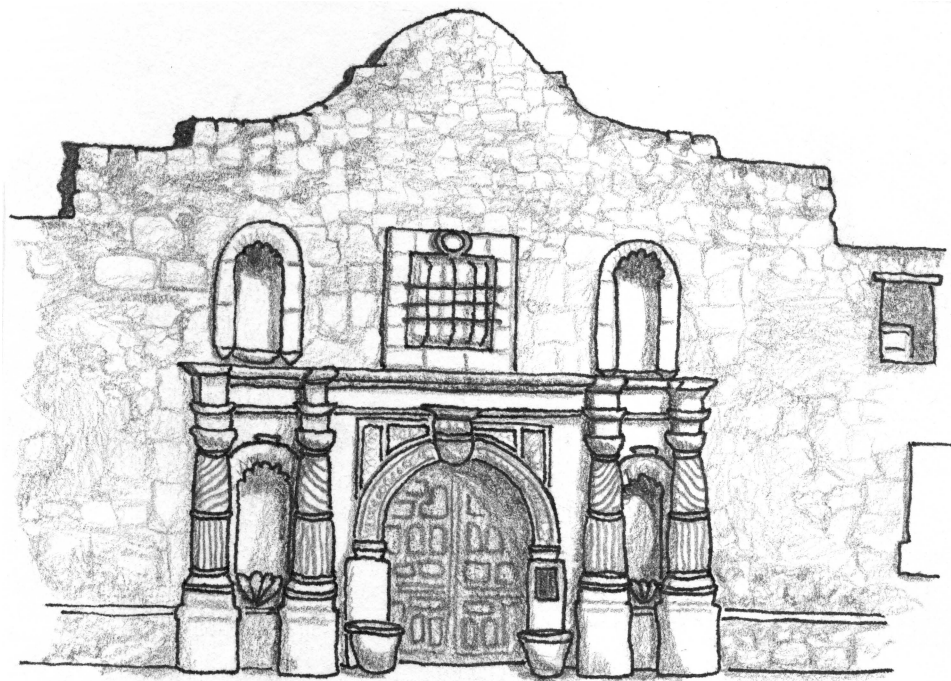
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: February 11, 2020





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 Requests/Questions

Whether a city employee violates section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility 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 February 11, 2020.

TRD-202000564

Ian Steusloff

General Counsel

Texas Ethics Commission

Filed: February 11, 2020



Advisory Opinion Requests/Questions

Whether section 36.07 of the Penal Code or section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political 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, Gov-

ernment 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 February 11, 2020.

TRD-202000566

Ian Steusloff

General Counsel

Texas Ethics Commission

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Advisory Opinion Requests/Questions

Whether section 572.069 of the Government Code prohibits a former employee of a state agency from accepting employment from a person, whose bid proposal the employee reviewed on behalf of the agency, when: (1) the agency solicited bid proposals from a list of purportedly eligible vendors provided by another state agency, (2) the person submitted a bid proposal in response to the solicitation from the agency, (3) the person was not eligible by law to enter into the contract with the agency and had been erroneously included in the list of eligible vendors provided by another state agency, and (4) the agency ended the procurement because there were no other bid proposals submitted for the contract. **(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 February 11, 2020.

TRD-202000567

Ian Steusloff

General Counsel

Texas Ethics Commission

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Advisory Opinion Requests/Questions

Whether a contribution from a federal political committee to a federal "Super PAC" is considered a political expenditure made in connection with an election voted on in Texas for purposes of calculating whether the federal political committee is an out-of-state political committee. **(AOR-632)**

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 February 11, 2020.

TRD-202000568
Ian Steusloff
General Counsel
Texas Ethics Commission
Filed: February 11, 2020



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.825

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.825, concerning the Texas Brain Injury Advisory Council.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to extend the Texas Brain Injury Advisory Council (TBIAC) for four years until July 1, 2024. Additional amendments to the rule include editorial changes and aligning the rule language with all other HHSC advisory committee rules. Reporting requirements are being amended to align with statute and policy.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.825(a) corrects the TBIAC acronym and aligns the rule language with all other HHSC advisory committee rules. The amendment also specifies that the TBIAC is subject to §351.801 of this subchapter.

The proposed amendment to §351.825(b)-(d) corrects the TBIAC acronym and aligns the rule language with all other HHSC advisory committee rules.

Section 351.825(d) also amends the reporting requirements, so it aligns with advisory committee reporting requirements in statute and policy.

The proposed amendment to §351.825(e) deletes the old subsection and replaces it with requirements for open meetings.

The proposed amendment to §351.825(f) corrects the TBIAC acronym and aligns the rule language with all other HHSC advisory committee rules. This subsection also specifies membership requirements for persons who want to serve on the TBIAC.

The proposed amendment to §351.825(g) corrects the TBIAC acronym and aligns the rule language with all other HHSC advisory committee rules. This subsection also changes the term of office end date for the chair and vice chair from July 1 to December 31.

The proposed amendment to §351.825(h) adds the TBIAC member training requirements in rule.

The proposed amendment to §351.825(i) allows the TBIAC to continue for four years until July 1, 2024.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner, Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated General Revenue (GR) cost of \$8,000 in fiscal year (FY) 2020, \$8,000 in FY 2021, \$8,000 in FY 2022, \$8,000 in FY 2023, \$8,000 in FY 2024, \$8,000 in FY 2025.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There are no entities other than HHSC required to comply with this proposal.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dee Budgewater, Deputy Executive Commissioner, Health, Developmental & Independence Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be that brain injury survivors, family members and caregivers, and professionals working with brain injury survivors will have a voice on the TBIAC to advise the Executive Commissioner and the Health and Human Services system. The TBIAC advises on strategic planning, policy, rules, and services related to the prevention of brain injury; rehabilitation; and the provision of long term services and supports for persons who have survived brain injuries to improve their quality of life and ability to function independently in the home and community.

Liz Prado 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. There are no entities other than HHSC required to comply with this proposal, which relates to existing advisory committee statutory authority, HHSC policy, and membership requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@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. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R016" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule.

The amendment affects Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.825. *Texas Brain Injury Advisory Council.*

(a) Statutory authority. The Texas Brain Injury Advisory Council (TBIAC) [(Texas BIAC)] is established under [in accordance with] Texas Government Code §531.012 and is subject to §351.801 of this subchapter (relating to Authority and General Provisions).

(b) Purpose. The TBIAC [Texas BIAC] advises the Executive Commissioner and the Health and Human Services system [HHSC Office of Acquired Brain Injury (OABI)] on strategic planning, policy,

rules, and services related to the prevention of brain injury; rehabilitation; and the provision of long term services and supports for persons who have survived brain injuries to improve their quality of life and ability to function independently in the home and community.

(c) Tasks. The TBIAC performs the following tasks [of the Texas BIAC include]:

(1) informing state leadership of the needs of persons who have survived a brain injury and their families regarding rehabilitation and the provision of long term services and supports to improve health and functioning that leads to achieving maximum independence in home and community living and participation;

(2) encouraging research into the causes and effects of brain injuries as well as promising and best practice approaches for prevention, early intervention, treatment and care of brain injuries and the provision of long term services and supports;

(3) recommending policies that facilitate the implementation of the most current promising and evidence-based practices for the care, rehabilitation, and the provision of long term services and supports to persons who have survived a brain injury;

(4) promoting brain injury awareness, education, and implementation of health promotion and prevention strategies across Texas; and

(5) facilitating the development of partnerships among diverse public and private provider and consumer stakeholder groups to develop and implement sustainable service and support strategies that meet the complex needs of persons who have survived a brain injury and those experiencing co-occurring conditions.

(d) Reporting requirements [Reports].

(1) Reporting to Executive Commissioner. By November 1 of each year, the TBIAC files an annual written report with the Executive Commissioner covering the meetings and activities in the immediate preceding fiscal year and reports any recommendations to the Executive Commissioner at a meeting of the Health and Human Services Commission Executive Council. The report includes:

[(1)] [The Texas BIAC files an annual written report with the Executive Commissioner.]

[(A) The report includes:]

(A) [(i)] a list of the meeting dates;

(B) [(ii)] the members' attendance records;

(C) [(iii)] a brief description of actions taken by the TBIAC [Texas BIAC];

(D) [(iv)] a description of how the TBIAC [Texas BIAC] accomplished its tasks;

[(v)] [a summary of the status of any rules that the Texas BIAC recommended to HHSC;]

(E) [(vi)] a description of activities the TBIAC [Texas BIAC] anticipates undertaking in the next fiscal year;

(F) recommendations made by the TBIAC, if any;

(G) [(vii)] recommended amendments to this section; and

(H) [(viii)] the costs related to the TBIAC [Texas BIAC], including the cost of HHSC staff time spent supporting the TBIAC's [council's] activities and the source of funds used to support the TBIAC's [council's] activities.

~~[(B) The report covers the meetings and activities in the immediate preceding calendar year and is filed with the Executive Commissioner each February of the following calendar year.]~~

~~(2) Reporting to Texas Legislature. The TBIAC shall submit a written report to the Texas Legislature of any policy recommendations made to the Executive Commissioner by December 1 of each even-numbered year.~~

~~[(2) No later than December 1st of each even-numbered year, the Texas BIAC submits a report to the Governor, the Texas Legislature, and the Executive Commissioner regarding its findings and recommendations.]~~

~~(c) Open meetings. The TBIAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.~~

~~[(e) Date of abolition. The Texas BIAC is abolished, and this section expires, four years after the date of the council's creation, in compliance with Texas Government Code §2110.008(b).]~~

~~(f) Membership. The TBIAC [Texas BIAC] is composed of 15 members appointed by the Executive Commissioner. In selecting members to serve on the committee, HHSC may consider the applicants' geographic location. Except as may be necessary to stagger terms, the term of office of each member is three years. A member may apply to serve one additional term.~~

~~(1) The TBIAC [Texas BIAC] includes:~~

~~(A) one representative from acute hospital trauma units;~~

~~(B) one representative from post-acute rehabilitation facilities;~~

~~(C) one representative of a long-term care facility that serves persons who have survived a brain injury;~~

~~(D) one healthcare practitioner or service [practitioner/service] provider who has specialized training or interest [training/interest] in the prevention of brain injuries or the [injuries and/or the] care, treatment, and rehabilitation of persons who have survived a brain injury;~~

~~(E) one representative of an institution of higher education engaged in research that impacts persons who have survived a brain injury;~~

~~(F) five persons who have survived a brain injury representing diverse ethnic or cultural [ethnic/cultural] groups and geographic regions of Texas, with:~~

~~(i) at least one of these being a transition age youth (age 18-26); [and]~~

~~(ii) at least one of these being a person who has survived a traumatic brain injury; and~~

~~(iii) at least one of these being a person who has survived a non-traumatic brain injury;~~

~~(G) four family members actively involved in the care of loved ones who have sustained a brain injury, with: [; and]~~

~~(i) at least one of these being a person whose loved one has survived a traumatic brain injury; and~~

~~(ii) at least one of these being a person whose loved one has survived a non-traumatic brain injury; and~~

~~(H) one representative from the stroke committee of the Governor's Emergency Medical Services (EMS) [EMS] & Trauma Advisory Council or other stakeholder group with a focus on stroke.~~

~~(2) Members are appointed for staggered terms so that the terms of five, or almost five, members expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.~~

~~[(2) The OABI is committed to ensuring that membership of the Texas BIAC reflects the cultural, ethnic, and geographic diversity of Texas. To this purpose, membership will include representation from at least 6 of the 11 Texas Health Service Regions (www.dshs.state.tx.us/regions/state.shtm). Vacancies will be announced to subscribers on delivery.gov and posted on the OABI and Texas BIAC websites to facilitate access to all interested stakeholders. The experience, education, and geographical locations of applicants will be evaluated in making recommendations for appointment.]~~

~~[(3) Except as may be necessary to stagger terms, each member is appointed to serve a term of three years, with an appropriate number of terms expiring each December 31st.]~~

~~(3) [(4)] If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.~~

~~(g) Officers. The TBIAC [Texas BIAC] selects a chair and vice chair of the TBIAC from its members [the presiding officer and an assistant presiding officer], one of whom must be [a public consumer member (] a person who has survived a brain injury or a family member actively involved in the care of a loved one who has survived a brain injury[)].~~

~~(1) The chair [presiding officer] serves until December 31 [July 1] of each even-numbered year. The vice chair [assistant presiding officer] serves until December 31 [July 1] of each odd-numbered year. [Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is selected.]~~

~~[(2) The presiding officer presides at all Texas BIAC meetings in which he or she is in attendance, calls meetings in accordance with this section, appoints committees of the council as necessary, and causes proper reports to be made to the Executive Commissioner. The presiding officer may serve as a voting, ex officio member of any committee of the council.]~~

~~[(3) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer serves until the Texas BIAC selects a new presiding officer.]~~

~~(2) [(4)] A member serves no more than two consecutive terms as chair [presiding officer] or vice chair. A chair or vice chair may not serve beyond their membership term [assistant presiding officer].~~

~~[(5) The Texas BIAC may reference its officers by other terms, such as chairperson and vice-chairperson.]~~

~~(h) Required Training. Each member shall complete all training on relevant statutes and rules, including this section and §351.801 of this subchapter, and Texas Government Code §531.012, and Chapters 551 and 2110. Training will be provided by HHSC.~~

~~(i) Date of abolition. The TBIAC is abolished, and this section expires, on July 1, 2024, in compliance with Texas Government Code §2110.008(b).~~

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 February 6, 2020.

TRD-202000438

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 206-5209



TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission (the Commission) proposes amendments to 7 TAC §91.1003, relating to Mergers and Consolidations. The proposed amendments would reference Hart-Scott Rodino Act (HSRA) requirements of proposed mergers instead of repeating specific thresholds within the HSRA that change over time.

The Commission proposes the following amendment to §91.1003. The language is presented to refer institutions directly to the federal HSRA language and its specific requirements and thresholds instead of duplicating all, or part of the federal provision, within the state rule. Currently the Rule refers to an outdated dollar threshold for measurement of HSRA applicability. This improves the current rule, which does not refer to all of the tests used to determine if HSRA applies to a merger transaction.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code

§2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D. Authority to adopt these amendments is found also in Texas Finance Code Sections 122.1531 and 122.156.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically Finance Code, Sections 122.005, 122.151 - 122.156, and 124.003.

§91.1003. *Mergers/Consolidations.*

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

(1) Acquirer credit union--The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree credit union--The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) Merger inducement--A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(4) Substantial--An amount that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds \$1,000.00 in total.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

(c) Notice of Intent to Merge/Consolidate. The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate.

(d) Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

(1) The terms and conditions of the merger n/consolidation including a detailed description of any substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial financial rewards or benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation;

(2) the current financial reports of each credit union;

(3) the combined financial reports of the two or more credit unions;

(4) an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(5) an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(6) a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(7) a summary of the advantages and disadvantages of the merger/consolidation;

(8) the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(9) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(e) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;

(C) the proposed Notice of Special Meeting of the members;

(D) a copy of the ballot form to be sent to the members;

(E) the current delinquent loan summaries for each credit union;

(F) [~~if the acquiree credit union has \$65.2 million or more in assets on its latest call report,~~] a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; and

(G) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Public Notice and Comment on Certain Applications [Notice of Applications]).

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the acquirer credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting and state the date, time, and place of the special meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;

(D) provide the name and location of the acquirer credit union;

(E) specify the methods permitted for casting votes; and

(F) if applicable, be accompanied by a mail ballot.

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

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 February 10, 2020.

TRD-202000479

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 837-9236



SUBCHAPTER O. TRUST POWERS

7 TAC §91.6001

The Credit Union Commission (the Commission) proposes amendments to §91.6001, relating to a credit union fiduciary duty in conducting trust operations. This rule is proposed as a result of its rule review under Texas Government Code §2001.039.

The proposed amendments represent only minor grammatical changes and do not change the meaning of the rule.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility

analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement. Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@ cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D, specifically §123.207.

§91.6001. Fiduciary Duties.

A credit union must conduct [its] trust operations in accordance with applicable law[;] and must exercise [its] fiduciary powers in a safe and sound manner. All fiduciary activities shall be under the direction of the credit union's board of directors. In carrying out its responsibilities, the board may assign, by action duly entered in the minutes, any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

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 February 10, 2020.

TRD-202000482

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 837-9236



7 TAC §91.6003

The Credit Union Commission (the Commission) proposes amendments to §91.6003, relating to a credit union's notice requirements when initiating fiduciary activities. The Commission proposes these amendments as a result of its regular rule review under Texas Government Code §2001.039.

The proposed amendment to §91.6003 represents minor grammatical changes, clarifies that a credit union must identify the address where it proposes to conduct fiduciary duties, and removes language that established a phased-in notification requirement for fiduciary activity prior to October 1, 2003, which no longer is necessary.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing

these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §123.207.

§91.6003. Notice Requirements.

[(a)] Intent. A credit union is required to notify the commissioner in writing of its intent to exercise fiduciary powers, at least 31 days prior to the anticipated commencement date of such fiduciary activities. The notice must contain:

- (1) A statement describing the fiduciary powers [that] the credit union will exercise;

- (2) An opinion of counsel that the proposed activities do not violate law, including citations to applicable law;

- (3) A statement that the capital of the credit union is not less than the capital required by law of other financial institutions exercising comparable fiduciary powers;

- (4) Sufficient biographical information on proposed trust management personnel to enable the Department to assess their qualifications; and

- (5) The physical address of each location [A description of the locations] where the credit union will conduct fiduciary activities.

[(b) **Prior Activity.** A credit union that has initiated trust activities prior to the effective date of this rule shall file the notice prescribed in subsection (a) by October 1, 2003.]

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 February 10, 2020.

TRD-202000486

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 837-9236



7 TAC §91.6004

The Credit Union Commission (the Commission) proposes amendments to §91.6004, relating to a credit union's exercise of fiduciary powers. The Commission proposes the amendment as a result of its regular rule review under Texas Government Code §2001.039.

The proposed amendment represents a change in terminology to using a credit union's "net worth position," instead of the current term "capital," as a factor the commissioner considers in determining if a credit union's notice of its intent to exercise fiduciary powers is complete and accepted for filing. The term "net worth" is more readily defined by accounting and statutory sources and provides greater clarity to both the industry and the Department regarding the factors to be considered. Use of the term net worth would also synchronize federal and state terminology.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five

years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@ cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §123.207.

§91.6004. *Exercise of Fiduciary Powers.*

(a) Supervisory Review. Unless otherwise notified by the department, a credit union may exercise [its] fiduciary powers on the 30th day after the credit union receives written confirmation from the Department that the notice required under §91.6003 of this title (relating to Notice Requirements) is complete and accepted for filing. The Department will consider the following factors when reviewing such a notice:

- (1) The credit union's financial condition.
- (2) The adequacy of the credit union's net worth position [capital and whether that capital is sufficient under the circumstances].
- (3) The credit union's overall performance.
- (4) The fiduciary powers the credit union proposes to exercise.
- (5) The availability and expertise of legal counsel.
- (6) The experience and expertise of proposed trust management personnel.
- (7) The needs of the members to be served.
- (8) Any other facts or circumstances that the Department considers appropriate.

(b) Written Notice. Prior to expiration of the 30-day [30 day] period referred to in subsection (a) of this section, the commissioner may give the credit union written notice of denial or consent, which consent may include [subject to certain] conditions.

(c) Acceptance of Conditions. Commencement of the exercise of fiduciary powers constitutes a credit union's confirmation of acceptance of all conditions imposed by the commissioner under subsection (b) of this section and shall be considered an enforceable agreement against the credit union for all purposes.

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 February 10, 2020.

TRD-202000489

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 837-9236

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7 TAC §91.6006

The Credit Union Commission (the Commission) proposes amendments to §91.6006, relating to a credit union's development of appropriate policies and procedures for the exercise of trust powers. The commission proposes these amendments as

a result of its regular rule review under the Texas Government Code Section §2001.039.

The proposed amendments include minor grammatical changes and require certain policies, when appropriate, based on types of trust activity.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5) that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or

--positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §123.207.

§91.6006. Policies and Procedures.

A credit union exercising trust powers shall adopt and follow appropriate written policies and procedures [adequate] to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures must [should] address, where appropriate, the credit union's:

- (1) Brokerage placement practices;
- (2) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;
- (3) Methods for preventing self-dealing and conflicts of interest;
- (4) Selection and retention of legal counsel who is readily available to timely review trust instruments or other documents creating the credit union's fiduciary status and advise the credit union and its fiduciary officers and employees on all fiduciary related matters; and
- (5) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

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 February 10, 2020.

TRD-202000491

John J. Kolhoff
Commissioner
Credit Union Department
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 837-9236



7 TAC §91.6010

The Credit Union Commission (the Commission) proposes an amendment to §91.6010, relating to a credit union's custody of fiduciary assets. The amendment is proposed as a result of its regular rule review under Texas Government Code Section §2001.039.

The proposed amendment consists of a minor grammatical correction.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5) that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, microbusinesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §123.207.

§91.6010. *Custody of Fiduciary Assets.*

(a) A credit union shall place assets of fiduciary accounts in the joint custody or control of not fewer than two [the] fiduciary officers or employees designated for that purpose by the board of directors.

(b) A credit union shall keep assets of fiduciary accounts separate from the assets of the credit union. Except as otherwise authorized by applicable law and as may be in the best interests of the beneficiaries of the fiduciary account, a credit union shall keep assets of each fiduciary account separate from all other accounts.

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 February 10, 2020.

TRD-202000495

John J. Kolhoff
Commissioner
Credit Union Department
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 837-9236



7 TAC §91.6014

The Credit Union Commission (the Commission) proposes amendments to §91.6014, relating to a credit union's errors and omissions insurance coverage for trust powers. The Commission proposes these amendments as a result of its regular rule review under Texas Government Code §2001.039.

The proposed amendments to §91.6014 maintain the original \$500,000 coverage floor while requiring annual analysis and documentation of the appropriateness of the coverage relative to the trust activities undertaken.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be 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;

--lead to an increase or decrease in the fees paid to the department;

--create new regulations;

--expand, limit or repeal existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@ cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §123.207.

§91.6014. *Errors and Omissions Insurance.*

The credit union shall procure errors and omission insurance sufficient to mitigate the risks involved in fiduciary activities, but at no time shall errors and omissions insurance coverage be less than [of at least] five hundred thousand dollars. A credit union shall conduct and document the annual analysis of the appropriateness of the current coverage.

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 February 7, 2020.

TRD-202000500

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 837-9236

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC 16.13

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to §16.13 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division.

The amendments add language regarding the assignment of proceeds from the sale of deaccessioned objects to align with a requirement in HB 1422 of the 86th Legislative Session. That law requires that the proceeds from any sale at auction of deaccessioned objects benefit the source collections from which the objects were removed. The amendments also recognize that Texas Government Code §442.015, is a source of authority for the Commission's ownership of certain collections.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions seek to clarify that proceeds from the sale of deaccessioned items will benefit the site from which the items were removed and add a source of authority for the Commission's ownership of certain collections. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for each year of the first five-year period the amended rules are in effect, the public benefit will be the implementation of a transparent process for the sale of deaccessioned items. There are no anticipated costs to persons who are required to comply with the rule because participation in the transfer of deaccessioned items is voluntary.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities as participation in the transfer of deaccessioned items is voluntary; therefore, they are not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing these rules amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is re-

quired. There are no anticipated economic costs to the public in compliance with the amendments to these rules, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted in writing to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. This amendment is proposed under Texas Government Code §§442.201 and 442.202, which allow the THC to establish rules for the conservation, preservation, and use of state property related to Historic Sites entrusted to the THC's care. This rule is further proposed under the Texas Natural Resources Code §§191.051 and 191.052, which establish the THC as legal custodian over historic and archeological objects recovered and retained by the State of Texas and permit the THC to establish rules to reasonably effect the appropriate management of the archeological and historical resources of Texas. The amendment is further authorized under Texas Government Code §2175.909 (included in HB 1422 of the 86th Legislative Session to be effective September 1, 2019), which allows for the deaccessioning and transfer of items within an agency's qualifying collection. Finally, Texas Government Code §442.005(q), authorizes the Commission to adopt rules to administer Chapter 442 of the Texas Government.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a), provides the Commission with the authority to adopt the criteria to determine the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a), provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.13. Management of Collections.

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

(b) **Governance.** Statutory and administrative authority over state-owned collections that are managed by the Commission is established in Texas Natural Resources Code §§191.051, 191.058, 191.091, 191.092 [191.091-092]; Texas Government Code §§442.007, 442.015, 442.075, 2175.909; and in Chapter 26 and 29 of the Texas Administra-

tive Code. Operational and procedural requirements related to the care and management of state-owned collections overseen by the Commission are outlined in the Commission's Collections Management Policy (CMP).

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

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

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

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

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

(2) Sale. If a deaccessioned collection object cannot be transferred or exchanged, it may be sold as a means of disposition, preferable by public auction, in consultation with the Texas Facilities Commission and following the provisions outlined by Texas Government Code §2175.909 (relating to Sale of Certain Historic Property, Proceeds of Sale). All proceeds from any sale at auction of such deaccessioned objects would benefit the source collections from which the objects were removed.

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

(B) Vendor qualifications. When selecting a vendor to sell the deaccessioned collection(s) by competitive bid, auction, or direct sale to the public, the Commission must publish a Request for Qualifications (RFQ) to ensure that the sale is conducted by a quali-

fied vendor. Selection of the vendor should be the most advantageous to the state under the circumstances.

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

(D) Dedicated account. The Commission shall create a dedicated fund in the general revenue fund for the deposit of any money resulting from the sale of deaccessioned items. All proceeds from any sale at auction of such deaccessioned objects would benefit the source collections from which the objects were removed. The Commission must ensure that money in the fund is appropriated only for the purposes prescribed by Texas Government Code §2175.909(f), including the care and preservation of the Commission's qualifying collection.

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 February 4, 2020.

TRD-202000421
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 463-6100



CHAPTER 24. RESTRICTED CULTURAL RESOURCE INFORMATION

13 TAC §24.17

The Texas Historical Commission (Commission) proposes an amendment to §24.17, concerning Criteria for Access to Restricted Information.

The proposed change corrects a numbering error in the citation referencing the definition of professional archeologist, or principal investigator, found in Chapter 26 of the Commission's rules.

The current, incorrect, citation found in §24.17(a)(2) references the definition of professional archeologist or principal investigator as defined by §26.5. The correct citation is §26.4.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendment is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarification in the process for the destructive analysis of human remains that are part of held-in-trust collections by referencing the correct definition in the Commission's rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendment to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this amendment and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. THC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code, §2006.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendment would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendment may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. This amendment is proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas and Texas Gov-

ernment Code §442.005(q), which authorizes the Commission to adopt rules to carry out its duties.

CROSS REFERENCE TO STATUTE. This amendment is proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. The proposed amendment implements Sections 191.091 and 191.092 of the Texas Natural Resources Code. No other statutes, articles, or codes are affected by these amendments.

§24.17. *Criteria for Access to Restricted Information.*

(a) Qualified applicants meeting one or more of the following criteria may be granted access by the THSA Coordinator:

(1) Meet the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) for Archeology.

(2) Meet the definition of professional archeologist, or principal investigator as defined by §26.4 [§26.5] of this title (relating to Definitions).

(3) Be a current member of the Texas Archeological Stewardship Network.

(b) Applications from persons not meeting the criteria set forth in subsection (a) of this section must have a clear and legitimate scientific or legal interest in being granted access to RCRI. Their applications will be reviewed by the access committee, and access will be granted or denied by the committee as specified in §24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).

(c) If an applicant is denied access to RCRI, the applicant may appeal that decision before the commission at one of its regularly scheduled public meetings. Appeals must be submitted in writing to the commission at least 30 days prior to a scheduled meeting of the commission.

(d) Limitations on access to RCRI.

(1) Firms engaged in the business of cultural resource management for profit that do not have a qualified staff archeologist do not have a legitimate scientific or legal interest and may not be granted access to RCRI.

(2) Entities granted access to RCRI solely on the basis of ownership shall be granted access only to information on the sites they actually own, to the extent it is practical to limit such access. They shall not be granted statewide access to the restricted portion of the THSA.

(3) Technical support personnel working with and under the supervision of a currently authorized RCRI user who has a legitimate scientific or legal interest may be granted access.

(4) College students must submit a letter from a sponsoring professor, verifying their need to access the restricted data of the THSA together with the RCRI application form. If access is approved, students must work under the supervision of a currently-authorized RCRI user.

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 February 4, 2020.

TRD-202000418

Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 463-6100



CHAPTER 26. PRACTICE AND PROCEDURE SUBCHAPTER C. ARCHEOLOGY

13 TAC §§26.13, 26.15, 26.17

The Texas Historical Commission (Commission) proposes amendments to §§26.13, 26.15, and 26.17, relating to Practice and Procedure for Archeology.

This change establishes requirements for research designs and Antiquities Code permits relating to the use of destructive techniques for analysis for all collections, but particularly human remains.

The proposed amendment to §26.13 for Application of Archeological Permits clarifies that any permitted archeological investigation employing destructive methods to conduct analysis on human remains must include the proposed analysis as part of the research design of the project, or address this through a permit amendment prior to initiation of analysis.

The proposed amendments to §26.15 for Archeological Permit Categories reiterate the responsibility of the permittee or sponsor to fund and provide the support necessary to complete permitted projects. Additionally, a new permit type, the Human Remains Testing permit, is established to ensure that the Commission has clear authority over any destructive analysis of human remains that are held-in-trust.

The amendment to §26.17 for Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data clarifies the circumstances and processes for the use of destructive analysis on held-in-trust and permitted archeological collections, including human remains, referenced in 13 TAC 26.17(f).

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarification in the process and circumstances for the destructive analysis of artifacts and particularly human remains. The amendments will also allow permittees and the public to obtain a greater amount of scientific knowledge in the execution of permit activities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on local economy for the first five years that the proposed amendments are effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government

and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. The Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code, §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. Natural Resources Code §191.054 allows the Commission to issue permits for the survey and discovery, excavation, demolition, or restoration of, or the conduct of scientific or educational studies at, in, or on landmarks. The amendments are further authorized by Texas Government Code §442.005(q), which grants the Commission the power to adopt rules to administer Chapter 442 of the Texas Government Code.

CROSS REFERENCE TO STATUTE. These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. The proposed amendments implement Sections 191.054 and 191.055 of the Texas Natural Resources Code. No other statutes, articles, or codes are affected by these amendments.

§26.13. *Application for Archeological Permits.*

(a) Justification for investigation. Investigations undertaken on publicly owned cultural resources or to locate or discover such resources must be oriented toward solving a particular research problem, preparation of a site for public interpretation, or for the purpose of salvaging information and specimens from a site threatened with immediate destruction.

(b) Eligibility for application. Permits to conduct investigations of any nature on landmarks or for the discovery of potential landmarks, or on lands owned or controlled by agencies or political subdivisions of the state will be issued exclusively by the Commission [eommission] under the conditions provided in the Antiquities Code of Texas and in this chapter.

(1) Permits may be issued by the Commission [eommission] to scientific and educational institutions, nonprofit corporations and organizations, investigative firms, and governmental agencies which have demonstrated their ability to carry out proper archeological investigations through their own staffs, including one or more professional archeologists who can serve as principal investigators, and who will supervise the project, or through a contract with a professional archeologist who can serve as a principal investigator. Permits may also be issued to individuals and private corporations who:

(A) retain a professional archeologist who can serve as a principal investigator for the investigations, and can be in direct charge of the project from field investigation through preservation of collections and analysis of data to reporting of results; and

(B) if required by the Commission [eommission] or the terms or conditions of a Memorandum of Understanding, provide proof that adequate funds, equipment, facilities, and personnel are available to properly conduct the investigation as proposed to the Commission [eommission], and to report the results. The Commission [eommission] may require a performance bond to be posted as part of the application process.

(2) State or local archeological societies and archeological stewards wishing to conduct investigations on landmarks must have a principal investigator and be limited to non-compliance, investigation activities.

(3) Principal investigators holding one or more defaulted permits are not eligible to be issued additional permits until all terms and conditions of defaulted permits are met.

(4) Principal investigators and investigative firms that are currently censured due to permit application offenses are not eligible to be issued a permit. Once the censure period has lapsed the censured principal investigator or investigative firm will be eligible to be issued a permit.

(5) No permits will be issued if the principal investigator and/or investigative firm cannot commit to direction of the permitted investigations by the principal investigator.

(c) Application for permit. Permit application forms may be obtained from the Commission [eommission]. Any institution, corporation, organization, museum, investigative firm, or individual desiring a permit for investigations must file a completed application with the Commission [eommission] prior to the proposed beginning date of the project. Special circumstances may require that a permit be issued on short notice when a site is threatened with immediate destruction. When a permit is issued for emergency salvage of a site threatened with destruction, the same rules apply as with all permits. The permit application must include:

- (1) a statement of the purpose of the investigation;
- (2) an outline of the proposed work and research design;
- (3) the proposed beginning date for the fieldwork and the length of time that will be devoted to the entire project;
- (4) name, address, and telephone number of the principal investigator, sponsor, and landowner or controlling agency;

(5) an accurate plotting of the particular site or area to be investigated on a 7.5' USGS quadrangle map and locational data indicating the universal transverse mercator (UTM) coordinates;

(6) the name of the facility where the specimens, material, and data will be kept during analysis of results of the investigation; and

(7) evidence of adequate funds, personnel, equipment, and facilities to properly complete the proposed investigation.

(d) Research design. Research designs prepared prior to implementation of a field study and submitted with an Archeological Permit Application Form are essential to the success of scientific objectives, resource management decision-making, and project management. The following points should be considered during formulation of a research design.

(1) Research designs present the essential objectives of a project or study and the means by which those objectives will be attained. As such, the research design is an efficient means of communicating with resource managers and the professional community at large.

(2) The research design provides a logical basis for detailed project planning and assessment of resource significance.

(3) Research designs may contain a wide range of theoretical and methodological approaches. Similarly, research designs may address general research objectives, as well as more focused types of problem orientation. The following criteria shall be met.

(A) Care should be taken to link the research design to existing topical and geographical bodies of data.

(B) The nature of the resources under investigation should be considered.

(C) The need to address a wide range of cultural and scientific resources should be considered.

(D) Applied research that addresses cultural resource management and impact-related issues should be recognized as necessary and incorporated into research designs whenever possible.

(E) The skills of the investigative personnel must be appropriate to the project goals and specifications in the research design. In many cases it may be desirable to include provisions for consultants with special expertise.

(4) Research designs should not be conceived as rigid, unchanging plans. Although research designs may place relatively greater emphasis on certain kinds of scientific questions and certain kinds of data collection, as circumstances warrant, the investigator is not relieved of responsibility to recognize other research. Whether such alternative questions and data warrant changes in the ongoing investigation is a question that should be explicitly addressed and answered in the context of pertinent resource management objectives and research goals. It is expected that research designs will be modified as projects develop. A conscious effort should be made to modify research designs to exploit new information efficiently. It is to be expected that some research objectives will, for many reasons, prove less productive than anticipated, while other objectives will become more important than anticipated or perhaps materialize for the first time. The crucial objectives in the modification process are:

(A) demonstrated progress in solving stated problems; and

(B) subsequent modification of a research design on the basis of explicit, rational decisions intended to attain stated goals.

(5) Research designs that anticipate encountering human remains must contain a detailed treatment and preservation plan devel-

oped in consultation with the Commission. Any analytical methodologies resulting in the destruction of human remains to obtain the maximum amount of scientific knowledge must be explicitly addressed in the research design for the Antiquities Permit or must be approved by the Commission with a permit amendment prior to initiation.

§26.15. *Archeological Permit Categories.*

Several categories of permits oriented toward specific types of investigation are issued by the Commission [eommission]. Pursuant to 13 TAC §26.13 (relating to Application for Archeological Permits), the permit applicant or project sponsor is responsible for ensuring that all permitted projects are undertaken by qualified personnel and with adequate funds and material support. The following is a list of permits associated with archeological investigations:

(1) Annual permit. A public agency or institution may be granted an Annual Permit, allowing for survey, recording, study, protection, stabilization, or conservation projects that cover a number of similar investigations at different locations. The annual permit will be issued for a specific period of time and may be developed by the public agency or institution, and the Commission [eommission] either under the auspices of a Memorandum of Understanding (MOU) or by means of a letter agreement. Annual Permits may also be used to govern the survey, recording, study, protection, stabilization, and conservation projects related to designated landmarks or eligible landmarks. The Annual Permit will adhere to, but not be limited to, the Commission's [eommission's] rules. The standards described in an Annual Permit will be administered by a qualified archeologist on the staff of or contracted by that public agency or institution. The Commission [eommission] will be informed through an annual report of all projects completed under the authority of the Annual Permit with details adequate to confirm compliance.

(2) Alternative mitigation permit. A permit issued for a mitigation alternative may require additional conditions including studies, investigations, or other actions as deemed necessary by the Commission [eommission], and will be specified in the terms and conditions of the permit. Permission for construction to proceed may be granted depending upon the satisfaction of the terms of the permit. Alternative forms of mitigation may include, but are not limited to:

(A) monitoring of a proposed construction project to record and report the discovery of unanticipated, important archeological deposits;

(B) conducting archival and historical research to document the significance of the site;

(C) capping or burying in place important archeological deposits if deemed appropriate by the Commission [eommission];

(D) protecting significant remaining portions of a site by donation of the undisturbed area to a nonprofit organization, state agency, or a political subdivision of the state; and

(E) by acquisition and donation of a site or sites to a nonprofit organization, state agency, or a political subdivision of the state.

(3) Data recovery permit. This permit category is for the purpose of full investigation and extensive excavation of particular archeological site or sites. Data recovery must be based on a research design approved by the Commission [eommission]. The evidence from a skillfully accomplished archeological excavation provides a detailed picture of the human activities at the site; emphasis is placed on the information that can be elicited rather than on the artifacts. In data recovery, the archeological deposits are removed by digging and are, therefore destroyed. Permission for construction to proceed may be granted depending upon the results of this level of investigation. Spe-

cific requirements may be set forth by the Commission [eommission] in the permit. The destruction can be justified only if:

(A) it is done with such care that antiquities and cultural and environmental data in the area excavated are discovered, and if possible, preserved;

(B) information has been accurately recorded, whether its importance is immediately recognized or not, to remain available after the site has disappeared; and

(C) the record and results of the investigation are made available through publication.

(4) Emergency permit. A permit may be authorized by the Commission [eommission] for the purposes of performing investigations prior to formal application for a permit. Any of the above-referenced categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under conditions where the investigations must be initiated or performed prior to the formal issuance of the permit. Legitimate emergency conditions include those situations when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the situation and findings. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(5) Exhumation permit. The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator in accordance with the Texas Health and Safety Code, Chapter 711.

(6) Human remains testing permit. This permit is issued for the destructive analysis of human remains that are accessioned held-in-trust state associated collections maintained in certified curatorial repositories as described under 13 TAC §29.5 (relating to Disposition of State Associated Collections) and in accordance with the Texas Health and Safety Code, Chapter 711. Destructive analysis may include, but is not limited to, DNA, radiocarbon dating, or isotope analysis. Specific requirements for investigation and reporting may be required by the Commission as part of the permit.

(7) [(6)] Intensive survey permit. This permit category is for the purpose of an intensive 100 percent pedestrian survey of a project or permit area. Components of an intensive survey may include, but are not limited to, archival research, pedestrian survey, shovel and/or mechanical subsurface probing, surface artifact inventories, site recordation, and site assessment. Such a survey can be performed in many ways but must, at a minimum, conform to the Archeological Survey Standards for Texas, which are available through the Commission [eommission] and the Council of Texas Archeologists. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(8) [7] Monitoring permit. Unless otherwise specifically authorized by the Commission [eommission], this permit category is for the purpose of having a professional archeologist on-site to observe construction activities that may or will damage cultural resources. The archeologist is required to report findings and impacts to sites to the Commission [eommission]. Monitoring may be conducted during or after other phases of archeological investigation and may not involve the need for a separate permit. However, if monitoring is the only investigation deemed necessary relative to a construction activity, then a monitoring permit will be required. If previously unrecorded and significant archeological deposits are recorded during a monitoring investigation, construction activities in the immediate area of the find must stop and the principal investigator must notify the Archeology Division

of the find within 24 hours. Specific requirements of monitoring may be required by the Commission [eommission] as part of the permit.

(9) [8] Preservation of rock art. This permit category is for the purposes of preserving, removing, recording, and copying all manner of rock art. Preservation techniques which involve application of brushes, heat, chemicals, water, chalk, petroleum products, or other preparations to the rock surfaces are prohibited unless specifically authorized by the Commission [eommission]. Specific requirements may be included by the Commission [eommission] as part of the permit.

(10) [9] Reconnaissance survey permit. This permit category is for the purpose of location, inventory, and assessment of cultural resources of a specific area by conducting archival searches and by searching for sites. Reconnaissance is limited to recording site locations, mapping, photographing, controlled surface sampling, and possible limited shovel testing. A reconnaissance survey does not take the place of an intensive survey; it is used to determine whether an intensive survey will be warranted. Specific requirements may be imposed by the Commission [eommission] as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(11) [10] Testing permit. This permit category is for the purpose of detailed subsurface examination of cultural resources including systematic test excavations of a particular site or area. Testing must be oriented toward sampling a representative portion of a particular site or sites and may be conducted to determine if a landmark contains significant materials. Specific requirements may be imposed by the Commission [eommission] as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(12) [11] Underwater excavations permit. In order to fulfill justified research objectives, or if damage to significant historic and prehistoric sites cannot be avoided, a full-scale underwater archeological excavation must be carried out under the direct supervision of an underwater archeologist. The intensive investigation and excavation must include documentary research and, for shipwrecks, detailed magnetometer work. Excavations must be supported by adequate equipment and supplies to insure proper recording, preservation, and the recovery of the maximum amount of data. Thorough analysis and a complete report are required. Proper antiquities conservation is required for all artifacts, and all specimens recovered are state property. Specific requirements may be included by the Commission [eommission] as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(13) [12] Underwater survey permit. Underwater resources include shipwrecks and submerged prehistoric and historic sites. Surveys for these cultural resources are conducted with electronic instrumentation including the proton magnetometer, side-scan and sub-bottom sonar, and positioning systems. In some instances, divers, using scuba gear search for and examine a specific site or structure. Work is conducted under the direct supervision of an underwater archeologist or underwater archeological surveyor. Data acquired are to be rendered to the Commission [eommission] along with an analysis and report. Specific requirements may be included by the Commission [eommission] as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(14) [13] Underwater test excavations permit. Significant magnetic and/or acoustic anomalies discovered during survey must be tested by excavation under the direct supervision of an underwater archeologist in order to determine the source of the anomalies. Inspection by divers, coring, or other appropriate means must be used to test

the nature of suspected prehistoric or historic sites. In the case of magnetic anomalies, sediment must be removed to allow identification, approximate dating, and determination of the importance of objects and sites found. Any artifacts recovered from state lands are property of the State of Texas. Extensive recovery during testing is discouraged. Accepted standards for provenience control and archeological data recovery must be maintained. Data must be analyzed and rendered to the Commission [eommission] in a written report. Proper conservation of any artifacts recovered must be carried out. Specific requirements may be required by the Commission [eommission] as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

§26.17. Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data.

(a) Processing. Principal investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, packaging in archival materials; arranging for the curation of all collections, specimens, samples, and records; and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, samples, original field notes, maps, drawings, photographs, and standard state site survey forms resulting from the investigations remain the property of State of Texas. Certain exceptions left to the discretion of the Commission [eommission] are contained in Texas Natural Resources Code, §191.052(b). The Commission [eommission] will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on landmarks or potential landmarks, which remain the property of the State. Antiquities from landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. Such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from landmarks.

(1) After investigation of a landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the Commission [eommission]. Prior to the expiration of the permit, proof that archeological collections and related field notes are housed in a curatorial facility is required through the submission of a curation form. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) Institutions housing antiquities from landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from landmarks will be designed in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the Commission [eommission] and originating at an adequate facility nearest the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the Commission [eommission]. A variety of special, short-term exhibits may also be authorized by the Commission [eommission].

(d) Pursuant to Texas Natural Resources Code, §§191.091 - 191.092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The Commission [eommission] is charged with the ad-

ministration of the Antiquities Code of Texas and exercises the authority of the State in matters related to these held-in-trust collections.

(e) Decisions regarding the disposal or destructive analysis of held-in-trust collections are the legal responsibility of the Commission [~~eommission~~]. Acceptable circumstances for disposal or destructive analysis are provided by this chapter. Exceptions may be considered by the Commission [~~eommission~~]. Under no circumstances will held-in-trust collections be disposed of through sale.

(f) Disposal. The Commission's [~~eommission's~~] rules for disposal apply to state-associated collections prior to accessioning from an archeological project on public land or under public water under an Antiquities Permit issued by the Commission [~~eommission~~].

(1) Disposal of state-associated collections from a site on public land or from public water under an antiquities permit issued by the Commission [~~eommission~~] must be approved by the Commission [~~eommission~~]. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which any state-associated collection is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the Commission [~~eommission~~] prior to any disposal action.

(2) The appropriate reasons for disposal of state-associated collections include, but are not limited to, the following:

- (A) are highly redundant and without additional merit.
- (B) lack historical, cultural, or scientific value.
- (C) have decayed or decomposed beyond reasonable use and repair or by their condition constitute a hazard to other objects in the collection.
- (D) may be subject to disposal as required by federal laws.

(3) State-associated collections disposed of after recovery must be documented in the notes and final report, with copies provided to the curatorial facility.

(4) The Commission [~~eommission~~] relinquishes title for the State to any state-associated collections approved for disposal. The state-associated collections must be disposed of in a suitable manner.

(g) Destructive Analysis. The Commission's rules for destructive analysis apply to state-associated collections that are accessioned and held-in-trust by a certified repository as stated in 13 TAC §29.5(g) (relating to Disposition of State Affiliated Collections). All analysis of artifacts, including human remains, that is destructive in nature and conducted prior to accessioning must be covered by the research design approved for the Antiquities Permit.

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 February 4, 2020.

TRD-20200419

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 463-6100



CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §29.5

The Texas Historical Commission (Commission) proposes amendments to §29.5, concerning Disposition of State Associated Collections.

This amendment establishes a requirement that the Commission review proposals for the destructive analysis of human remains from held-in-trust collections.

The amendment to the current rules for the Disposition of State Associated Collections clarifies the processes for the use of destructive analysis on held-in-trust human remains collections. Given the sensitive and special nature of human remains, the current rules are being amended with a defined process for the destructive analysis of human remains that establishes the Commission's need to review any proposed research and the potential to require issuance of a Human Remains Testing Permit as defined in 13 TAC §26.15.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarification in the process for the destructive analysis of human remains that are part of held-in-trust collections. The public will also benefit from Commission supervision of destructive analysis of human remains to ensure the maximum scientific and educational value is obtained from resource analysis.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. THC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code, §2006.0221. The amendment establishes a requirement for Commission review of destructive analysis of human remains, however, this process only applies to a small subset of archeological analyses involving human remains. During the first five years that the amendments would be in effect, the pro-

posed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas located at Chapter 191 of the Texas Natural Resources Code. Natural Resources Code §191.055 grants the Commission supervisory authority with respect to permits issued under §191.054 and §191.053 to ensure that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved. The amendment is further authorized by Texas Government Code §442.005(q), which grants the Commission authority to adopt rules to carry out its duties, including the duty to administer the Antiquities Code of Texas.

CROSS REFERENCE TO STATUTE. These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. The proposed amendments implement Sections 191.091 and 191.092 of the Texas Natural Resources Code. No other statutes, articles, or codes are affected by these amendments.

§29.5. Disposition of State Associated Collections.

(a) **Ownership.** All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the Commission are contained in the Texas Natural Resources Code, §191.052(b). The Commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Antiquities Landmarks or potential landmarks, which remain the property of the State. These state-associated collections are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the Commission that such antiquities shall never be used for commercial exploitation. (see also 13 TAC §26.17 (relating to Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data))

(b) **Housing, conserving, and exhibiting state-associated collections.** (see also 13 TAC §26.17)

(1) After investigations conducted under the jurisdiction of the Antiquities Code of Texas have culminated in the reporting of re-

sults, these state-associated collections will be permanently preserved in research collections at a curatorial facility certified by the Commission. Prior to the expiration of a permit, proof that state-associated collections are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status. (see also 13 TAC §26.17)

(2) Institutions housing state-associated collections will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes. (see also 13 TAC §26.17)

(3) Exhibits of state-associated collections will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the Commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the Commission. A variety of special, short-term exhibits may also be authorized by the Commission. (see also 13 TAC §26.17)

(c) Access to state-associated collections for research purposes--collections retained under direct supervision of the Commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-permit reporting. A copy of the report will be provided to the Commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the Commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Antiquities Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the Commission.

(5) The Commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Curatorial facilities certified by the Commission shall promulgate reasonable procedures governing access to those collections under their stewardship.

(d) Deaccession. The Commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the Commission for the State. Thus, the decision to deaccession held-in-trust objects or state-associated collections is the responsibility of the Commission. The Commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the Commission will not relinquish title in case the object, sample, or record subsequently is returned.

(e) Certified curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these deaccessioning actions.

(1) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the Commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the Commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the Commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility;

(G) Objects that may be subject to deaccessioning as required by federal laws; and

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the Commission.

(f) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, Commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the Commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the Commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(g) Destructive Analysis. The Commission's rules for destructive analysis apply only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(A) Any proposal for destructive analysis of human remains must be reviewed by the Commission.

(B) The Commission will only issue permission to a qualified applicant of an Antiquities Code Human Remains Testing permit pursuant to 13 TAC §26.13 and §26.15 (relating to Application for Archeological Permits and Archeological Permit Categories, respectively).

(2) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the Commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the Commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The Commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

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 February 4, 2020.

TRD-202000420

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 463-6100



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.21, 110.23, 110.30, 110.70

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.21, 110.23, 110.30, and 110.70, regarding the Athletic Trainers Program. These proposed changes are referred to as "proposed rules".

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 110 implement Texas Occupations Code, Chapter 451, Athletic Trainers.

The proposed rules consist of recommendations made by a workgroup of the Advisory Board of Athletic Trainers and recommendations from staff. The advisory board workgroup focused on improving the pass rate on the Texas written examination, and it recommended listing the domains that may be tested on the written exam in order to provide advance notice and guidance to students and education providers. The workgroup also recommended updating the required coursework and apprenticeship topics for applicants qualifying under §451.153(a)(1) of the Texas Occupations Code, as the proposed new educational requirements are essential knowledge areas for athletic trainers and are already being taught in athletic training programs across the state.

The remainder of the proposed rule changes were recommended by staff. These include clarification and clean-up changes, changing the term of a temporary license, removing the prohibition on athletic trainers using testimonials in advertising, and allowing the Department to accept Board of Certification (BOC) test results from applicants who successfully completed the exam at any time, not just on or after January 1, 2004. The proposed new end date of a temporary license closes a loophole that was inadvertently created when the rules were amended to require an applicant to pass the written exam before the applicant is eligible to take the practical exam. The proposed rules ensure that a temporary license is not valid indefinitely until the license holder passes the written exam. Instead, the temporary license is valid only until the results are released from the first practical exam that takes place at least 30 days after the temporary license was issued. The 30 days are a minimum window of time in which a temporary license holder could pass the written exam and register for the practical exam. This change also aligns with the intent of the existing rule, which is for the temporary license to expire when the results are released for the first practical examination for which the license holder could register. The proposed amendment removing the prohibition on testimonials in advertising is based on guidance from Office of the Attorney General opinions. Finally, the proposed amendment to accept BOC exam results from before 2004 would allow applicants who have extensive athletic training experience to gain Texas licensure without having to take the Texas exam. In one instance, the January 1, 2004 cut-off date presented a delay in licensure for an applicant who had been BOC certified for 17 years, had two graduate degrees, and had worked as athletic training faculty at two universities. The proposed amendment would save applicants such as this the time and expense of taking another examination, thereby eliminating an unnecessary burden and impediment to licensure.

The Advisory Board of Athletic Trainers (Advisory Board) discussed the proposed rules on December 2, 2019, and recommended publishing the proposed rules, except for the amendment that would provide an exam waiver for applicants who successfully passed the BOC exam before 2004. The Advisory Board was concerned that before 2004, the BOC required a two-year apprenticeship, whereas the corresponding Texas apprenticeship required three years. The Department respects the professional opinion of the Advisory Board, particularly in matters of scope of practice and standard of care. In this case, however, the one-year difference in the apprenticeship has been outweighed by at least 16 years of professional experience. Therefore, the Department is publishing the proposed amendment and recommending removal of the January 1, 2004 cut-off date. The

Department has consistently focused its efforts on removing regulations that tend to place unnecessary burdens on licensure. In addition to the Department's own initiatives in this regard, in his October 8, 2019, letter, Governor Abbott instructed Texas state agencies to remove unnecessary and overbroad regulations. The proposed rule would remove an unnecessary impediment to Texas licensure for out-of-state licensees.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §110.21 by adding human physiology as a required course area for licensure under Texas Occupations Code §451.153(a)(1), clarifying that an affiliated apprenticeship setting may be any setting where athletic training takes place, and adding administrative management and assessment of injuries as required apprenticeship topics. The proposed rules also remove from subsection (c)(3) the description of an affiliated setting as being in a collegiate, secondary school, or professional setting as that description includes every setting where athletic training might take place.

The proposed rules amend §110.23 by adding a non-exclusive list of the domains that may be tested on the Texas written examination. The proposed rules also remove the January 1, 2004, date by which an applicant must have passed the BOC examination, in order for the BOC exam results to be accepted in lieu of passing the Texas examination.

The proposed rules amend §110.30 by changing the term of a temporary license and making clean-up changes to better describe the process for issuing temporary licenses. The provision for voiding a temporary license is not necessary because the license term does not extend past a point at which it would need to be voided.

The proposed rules amend §110.70 by removing a prohibition on athletic trainers including testimonials in their advertising and renumbering the section accordingly.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The proposed rule changes do not impact Department costs. The activities required to implement the changes are routine program administration tasks such as revising publications and websites or tasks included in work already being performed, such as reviewing license applications for specific course content completion and confirmation of passing the BOC exam. These tasks will not result in increased or decreased Department costs. Local governments do not enforce or administer the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules do not amend or impact the fees assessed by the licensing program, and local governments do not enforce or administer the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

als who provide athletic training services across the state. The proposed rules have no anticipated impact on the local economy because they are not anticipated to increase or decrease employment opportunities for athletic trainers in any area of the state.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit of listing the Texas written exam domains will be providing additional notice to students and educators of topics which may be tested. This may lead to more students being able to pass the written examination and enter the profession earlier. Additionally, the rule changes updating the required coursework and apprenticeship topics may result in improved apprenticeship competency levels and higher exam scores.

The public benefit of the clean-up and clarification changes will be enhanced understanding of the Athletic Trainer rules. In particular, the clarification regarding affiliated apprenticeship settings may lead to more students choosing to gain apprenticeship hours at affiliated settings, and more places partnering with colleges and universities to become affiliated apprenticeship settings. This could, in turn, expand the breadth of experience and knowledge gained by athletic training students.

The public benefit of accepting successful BOC exam results from prior to January 1, 2004, is that applicants who have already demonstrated mastery of athletic training concepts through the BOC exam and who likely have 15 years or more of athletic training experience will not have to re-test. This reduces barriers to entry, making more athletic training services available to the public and allowing applicants to enter the profession in Texas more quickly. Additionally, this change will save these applicants the cost of the Texas exam fee.

The public benefit of limiting the term of a temporary license will be ensuring public health and safety. Specifically, it will ensure that persons who have not yet demonstrated mastery of athletic training through the written exam will not be allowed to practice athletic training indefinitely.

The public benefit of removing the prohibition on athletic trainers using testimonials in advertising will be providing the public with another source of information regarding the services of athletic trainers, and providing athletic trainers with another way to advertise, if they so choose.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The rules do not impose additional fees upon licensees, nor do they create requirements that would cause licensed athletic trainers to expend funds for training, staff, equipment, supplies, infrastructure, etc. Additionally, changes to required coursework and apprenticeship topics merely update the requirements to those already being taught in colleges and university athletic training programs.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will

have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

It is unknown how many licensed athletic trainers can be classified as small or micro-businesses. Most athletic trainers are employed by public and private colleges, universities, high schools, and organized professional or amateur sports teams and leagues. However, athletic trainers classified as small or micro-businesses would not be adversely impacted by the rule changes. The changes are clarifications of existing requirements and prohibitions and do not impose additional fees upon licensees or create requirements that would cause licensees to expend additional funds.

The proposed rules will have no adverse economic effect on rural communities because the proposed rules will not decrease the availability of athletic training services in rural communities, nor will they increase the cost of athletic training services in rural communities.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

The proposed rules do not create or eliminate a government program.

Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules do not create a new regulation.

The proposed rules do expand or limit an existing regulation. They do not repeal an existing regulation. Specifically, the proposed rules expand coursework and apprenticeship requirements in §110.21 and reduce the amount of time a temporary license may be held according to §110.30. The proposed rules limit requirements related to BOC exam dates in §110.23 and testimonials in advertising in §110.70.

The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules

do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Chapter 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposed rules.

§110.21. License Requirements.

(a) Applicants qualifying under the Act, §451.153(a)(1), shall have:

(1) a baccalaureate or post-baccalaureate degree, which includes at least 24 hours of combined academic credit from each of the following course areas:

- (A) human anatomy and human physiology;
- (B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;
- (C) kinesiology or biomechanics;
- (D) physiology of exercise;
- (E) athletic training, sports medicine, or care and prevention of injuries;
- (F) advanced athletic training, advanced sports medicine, or assessment of injury; and
- (G) therapeutic exercise, therapeutic rehabilitation, or therapeutic modalities; and

(2) an apprenticeship in athletic training meeting the following requirements:

- (A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;
- (B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;
- (C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. An affiliated setting may be any setting where athletic training takes place. No more than 300 hours

may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by a certified or state-licensed athletic trainer in prevention of injuries, emergency care, rehabilitation, ~~and~~ modality usage, administrative management, and assessment of injuries.

(b) (No change.)

(c) Applicants qualifying under the Act, §451.153(a)(2) or (a)(3), shall have a baccalaureate or post-baccalaureate degree or a state-issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state-licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at an ~~[a collegiate, secondary school, or professional]~~ affiliated setting which the college or university's athletic trainer has approved. An affiliated setting may be any setting where athletic training takes place. No more than 120 hours may be earned at one affiliated setting.

(d) - (h) (No change.)

§110.23. *Examination for Licensure.*

(a) (No change.)

(b) The examination required under the Act, §451.156 consists of a written examination, a practical examination, and a jurisprudence examination prescribed by the department.

(1) An applicant must pass the written examination prior to taking the practical examination.

(2) An applicant must complete the jurisprudence examination no more than six months prior to the date of application.

(3) The written examination may test subject areas including, but not limited to:

- (A) injury and illness prevention and wellness promotion;
- (B) examination and assessment;
- (C) immediate and emergency care;
- (D) therapeutic intervention; and

(E) healthcare administration and professional responsibility.

(c) - (l) (No change.)

(m) If an applicant has successfully completed the examination administered by the Board of Certification, Inc. (BOC) ~~[on or after January 1, 2004]~~, the applicant shall not be required to complete the state examination described in subsections (a) - (l) ~~unless the applicant has previously held a license issued by the department~~. The applicant must furnish to the department a copy of the test results indicating that the applicant passed the examination.

~~[(n) If an applicant has completed the examination administered by the Board of Certification, Inc. (BOC) before January 1, 2004, the applicant shall be required to complete the state examination described in subsections (a) - (l).]~~

§110.30. *Temporary License.*

(a) (No change.)

(b) The temporary license entitles an applicant to perform the activities of an athletic trainer until the results are released from the first practical examination administered at least 30 days after the temporary license is issued. ~~[results of the first practical examination, which the applicant is eligible to take, are released.]~~

~~(c) Except as provided in subsection (d), an applicant shall not be eligible for another temporary license after the initial temporary license is issued. [An applicant who failed an examination administered by the department, shall not be eligible for a temporary license. If a temporary license has previously been issued, it shall be voided and the applicant shall not be eligible for another temporary license.]~~

(d) (No change.)

§110.70. *Standards of Conduct.*

(a) - (p) (No change.)

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

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's service with another health care professional's service, unless the comparison can be factually substantiated;

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

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

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

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

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

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

(r) - (y) (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 Department of Licensing and Regulation

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For further information, please call: (512) 463-3306



CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter B, §111.13; Subchapter C, §111.20 and §111.23; Subchapter D, §111.35 and §111.37; Subchapter E, §§111.41, 111.42, 111.45, and 111.47; Subchapter F, §§111.52, 111.55, and 111.57; Subchapter H, §111.75 and §111.77; Subchapter I, §§111.81, 111.85, and 111.87; Subchapter J, §§111.92, 111.95, and 111.97; Subchapter L, §111.115 and §111.117; Subchapter N, §§111.130 - 111.132; Subchapter P, §§111.150, 111.151, 111.154, and 111.155; Subchapter Q, §111.160; Subchapter R, §111.171; Subchapter T, §111.192; Subchapter U, §111.201; and Subchapter V, §111.212; proposes new rules at Subchapter M, §§111.120 - 111.125; and Subchapter R, §§111.172 - 111.176; and proposes the repeal of existing rules at Subchapter S, §§111.180 - 111.183; and Subchapter U, §111.200, regarding the Speech-Language Pathologists and Audiologists program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111 implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists, and other applicable statutes. The proposed rules are necessary to implement bills from the 86th Legislature, Regular Session (2019) and from the 79th Legislature, Regular Session (2005); implement recommended changes from the Licensing Workgroup; and make terminology and other clean-up changes.

Bill Implementation Changes

The proposed rules are necessary to implement House Bill (HB) 1899, HB 2059, and HB 2847 (Article 7, §§7.001, 7.003, 7.004, and 7.008; and Article 10), 86th Legislature, Regular Session (2019).

HB 1899 requires automatic license denial or revocation for a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. The new statutory provisions under Texas Occupations Code, Chapter 108, Subchapter B, apply to certain health care professionals, including speech-lan-

guage pathologists, audiologists, interns, and assistants. The proposed rules add provisions providing notice of these new requirements.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Speech-language pathologists, audiologists, interns, and assistants are affected by this bill. The proposed rules implement HB 2059 and the new statutory provisions under Texas Occupations Code, Chapter 116 by requiring licensees under the Speech-Language Pathologists and Audiologists program to take the training course for each license renewal on or after September 1, 2020.

HB 2847 is an omnibus bill that affects multiple programs. Article 7 of the bill applies to multiple programs, including the Speech-Language Pathologists and Audiologists program. Article 7, §7.001 amended Texas Occupations Code, Chapter 51, the Texas Commission of Licensing and Regulation (Commission) and Department's enabling statute, to add new §51.203(b). This new section states that notwithstanding any other law, for each program regulated by the Department, the Commission by rule may establish the length of a license term, not to exceed two years. The proposed rules add references to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. Notwithstanding Texas Occupations Code §401.351, which requires licenses under Chapter 401 to be two years, the license term for interns will remain at one year pursuant to new §51.203(b). The proposed rules also implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

HB 2847, Article 10 applies to audiologists and interns in audiology who fit and dispense hearing instruments. Article 10 repealed statutory language, which required an audiologist or an intern in audiology, who fits and dispenses hearing instruments, to register with the Department the person's intention to fit and dispense hearing instruments. Article 10 also amended the existing contract requirements to require inclusion of the Department's website address in written contracts. The proposed rules implement these changes.

In addition, the proposed rules are necessary to implement HB 2680, Section 1, 79th Legislature, Regular Session (2005). This section of the bill created Texas Occupations Code, Chapter 112, which reduces the license requirements for certain retired health care practitioners whose only practice is performing voluntary charity care. The proposed rules create and implement retired voluntary charity care licenses and specify the requirements for applying for and holding this type of license. As required by the statute, the proposed rules define voluntary charity care and provide for reduced fees and continuing education requirements. The proposed rules apply to speech-language pathologists, assistants in speech-language pathology, audiologists, and assistants in audiology. The rules do not apply to interns in speech-language pathology or interns in audiology.

Licensing Workgroup Changes

The proposed rules are necessary to implement the changes recommended by the Speech-Language Pathologists and Audiologists Advisory Board's Licensing Workgroup. The proposed rules: (1) remove the prohibition on listing the American Speech-Language-Hearing Association (ASHA) Clinical Fellow (CF) credential in the intern's title under §111.42; (2) make a clean-up change to §111.75 to reflect the correct degree and

area of study for an audiology license and to align with the current requirements under §111.70; (3) update the consumer information notice and the license posting requirements under §111.151; and (4) update the language regarding the licensee's "internship year" counting toward the two years of experience necessary to supervise under §111.154.

As part of the Licensing Workgroup's recommendation, several issues were identified for further discussion by the full Advisory Board: (1) whether consumers and the general public understand the titles, certifications, and abbreviations under §111.42; and (2) whether continuing education requirements are necessary for renewal of a speech-language pathology intern license under §111.47 and §111.130. The Advisory Board discussed these issues but did not make any changes to the proposed rules.

Terminology and Other Clean-up Changes.

The proposed rules are necessary to make terminology and other clean-up changes to the rules. These changes include: replacing existing language with gender neutral language; updating references to the jurisprudence examination; updating cross-references to statutes and rules; inserting the standardized criminal history background check language and updating the provision regarding fingerprints; and consolidating the complaint and enforcement provisions into one subchapter.

The proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) at its meeting on January 24, 2020. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend Subchapter B. Speech-Language Pathologists and Audiologists Advisory Board.

The proposed rules amend §111.13, Officers. The proposed rules update the terminology in subsection (b) to use gender neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter C. Examinations.

The proposed rules amend §111.20, License Examination--General Requirements. The proposed rules amend this section to update the reference to the jurisprudence examination. (Terminology and Clean-up Changes)

The proposed rules amend §111.23, License Examination--Jurisprudence Examination. The proposed rules amend this section to update the references to the jurisprudence examination. (Terminology and Clean-up Changes)

The proposed rules amend Subchapter D. Requirements for Speech-Language Pathology License.

The proposed rules amend §111.35, Speech-Language Pathology License--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.37, Speech-Language Pathology License--License Terms; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update

the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules amend Subchapter E. Requirements for Intern in Speech-Language Pathology License.

The proposed rules amend §111.41, Intern in Speech-Language Pathology License--Internship and Supervision Requirements. The proposed rules amend the terminology in subsection (g) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.42, Intern in Speech-Language Pathology License--Practice and Duties of Interns. The proposed rules restructure the current provisions and remove the prohibition on listing the American Speech-Language-Hearing Association (ASHA) Clinical Fellow (CF) credential in the intern's title. This change allows an individual to list the credential, in addition to the intern's license title. (Licensing Workgroup Changes)

The proposed rules amend §111.45, Intern in Speech-Language Pathology License--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.47, Intern in Speech-Language Pathology License--License Terms; Renewals. The proposed rules amend subsection (a) to add a reference to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules under §111.47 also amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter F. Requirements for Assistant in Speech-Language Pathology License.

The proposed rules amend §111.52, Assistant in Speech-Language Pathology License--Practice and Duties of Assistants. The proposed rules amend the terminology in subsection (e) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.55, Assistant in Speech-Language Pathology License--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.57, Assistant in Speech-Language Pathology License--License Terms; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up

Changes) The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules amend Subchapter H. Requirements for Audiology License.

The proposed rules amend §111.75, Audiology License--Application and Eligibility Requirements. The statute requires an applicant for an audiology license to hold a doctoral degree in audiology or a related hearing science. The proposed rules amend subsection (b)(4) to reflect the correct degree and area of study for an audiology license and to align with the current requirements under §111.70(c), Audiology License--Licensing Requirements. (Licensing Workgroup Changes)

The proposed rules under §111.75 also amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.77, Audiology License--License Terms; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules amend Subchapter I. Requirements for Intern in Audiology License.

The proposed rules amend §111.81, Intern in Audiology License--Internship and Supervision Requirements. The proposed rules amend the terminology in subsection (e) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.85, Intern in Audiology License--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.87, Intern in Audiology License--License Terms; Renewals. The proposed rules amend subsection (a) to add a reference to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules under §111.87 also amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter J. Requirements for Assistant in Audiology License.

The proposed rules amend §111.92, Assistant in Audiology License--Practice and Duties of Assistants. The proposed rules amend the terminology in subsections (d) and (f) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.95, Assistant in Audiology License--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.97, Audiology Assistant License--License Terms; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules amend Subchapter L. Requirements for Dual License in Speech-Language Pathology and Audiology.

The proposed rules amend §111.115, Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements. The proposed rules amend subsection (b) to update the reference to the jurisprudence examination. The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.117, Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The proposed rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules add new Subchapter M. Retired Voluntary Charity Care Status License.

The proposed rules under new Subchapter M create and implement the retired voluntary charity care license and specify the requirements for applying for and holding this type of license. As required by the statute, the proposed rules define voluntary charity care and provide for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care. (Bill Implementation Changes)

The proposed rules add new §111.120, Applicability of Subchapter. The proposed rules specify the license types under Chapter 401 that are eligible for retired voluntary charity care status. This subchapter does not apply to the intern licenses. The definition of "volunteer health care provider" under Civil Practice and Remedies Code §84.003, which was referenced in other sections of HB 2680, includes the active and retired versions of the four license types listed in §111.120. Section 84.003 does not include interns. (Bill Implementation Changes)

The proposed rules add new §111.121, Definitions. The proposed rules define "voluntary charity care" and "compensation." (Bill Implementation Changes)

The proposed rules add new §111.122, Eligibility and Initial Application. The proposed rules establish the eligibility and application requirements for obtaining a retired voluntary charity care status license. (Bill Implementation Changes)

The proposed rules add new §111.123, Practice and Disciplinary Actions. The proposed rules establish the practice restrictions for a person holding a retired voluntary charity care status license and specify that a person holding this license is subject to disciplinary action. (Bill Implementation Changes)

The proposed rules add new §111.124, License Term; Renewal. The proposed rules establish a two-year license term for the retired voluntary charity care status license and specify the license renewal requirements, which include reduced continuing education hours. (Bill Implementation Changes)

The proposed rules add new §111.125, Returning to Active Status. The proposed rules establish the requirements for a person who holds a retired voluntary charity care status license and who wants to return to active status. These requirements include completing any additional hours of continuing education to meet the active license renewal requirements and submitting the license renewal fee for the applicable active license. (Bill Implementation Changes)

The proposed rules amend Subchapter N. Continuing Professional Education.

The proposed rules amend §111.130, Continuing Professional Education--Requirements and Hours. The proposed rules amend subsection (e) to specify the reduced continuing education hours for the retired voluntary charity care status licenses. The required hours are half of the continuing education hours required for active licenses. (Bill Implementation Changes)

The proposed rules amend §111.131, Continuing Professional Education--Courses and Credits. The proposed rules amend subsection (d) to update the reference to the jurisprudence examination. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.132, Continuing Professional Education--Records and Audits. The proposed rules update the terminology in subsection (a) to use gender-neutral language; change the references from "license holder" to "licensee" in subsection (d) for consistency purposes within the section; and make other clean-up changes to subsection (d). (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter P. Responsibilities of the Licensee and Code of Ethics.

The proposed rules amend §111.150, Changes of Name, Address, or Other Information. The proposed rules separate existing subsection (b) into two subsections. Subsection (b) addresses the requirements for submitting name changes. New subsection (c) addresses obtaining a duplicate license. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.151, Consumer Information and Display of License. The proposed rules update the consumer information notice and the license posting requirements. The proposed rules allow a licensee, who does not have a primary office or place of employment or who is employed in multiple locations, to carry a current license identification card. The proposed rules prohibit a licensee from displaying a photocopy of a license certificate or carrying a photocopy of an identification card in lieu of the original document. The proposed rules also make clean-up changes. (Licensing Workgroup Change)

The proposed rules amend §111.154, Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised. The proposed rules update subsection (a) regarding the licensee's "internship year" counting toward the two years of

experience necessary to supervise. This change clarifies that one year of the licensee's internship shall count toward the supervision requirements. (Licensing Workgroup Changes) The proposed rules also update the terminology in subsection (h) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.155, Standards of Ethical Practice (Code of Ethics). The proposed rules update the statutory cross-references in subsections (a) and (b); update the terminology in subsection (b) to use gender-neutral language; and remove outdated references to "registrant" in subsections (a) and (b). (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter Q. Fees.

The proposed rules amend §111.160, Fees. The proposed rules add a new subsection (i) to specify the reduced fees for the retired voluntary charity care status license. (Bill Implementation Changes)

The proposed rules amend Subchapter R. Complaints.

The proposed rules amend the title of Subchapter R to read "Complaints and Enforcement Provisions." The proposed rules combine Subchapters R and S into one subchapter. The enforcement sections under Subchapter S are being relocated to Subchapter R. (Terminology and Other Clean-up Changes)

The proposed rules amend §111.171, Complaints. The proposed rules update the title of §111.171 to reflect the expanded scope of the section. The proposed rules add new subsection (b) as a notice to licensees and to the public regarding qualified persons, including licensees and advisory board members, assisting the Department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

The proposed rules under §111.171 also add new subsection (c) as a notice to licensees and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §401.2535 addressed these issues for speech-language pathologists, audiologists, interns, and assistants. HB 2847, Article 7, §7.008, repealed §401.2535 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including speech-language pathologists, audiologists, interns, and assistants. (HB 2847, §7.004). (Bill Implementation Changes)

The proposed rules add new §111.172, Administrative Penalties and Sanctions. This new section was former §111.180. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §111.173, Enforcement Authority. This new section was former §111.181. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §111.174, Refunds. This new section was former §111.182. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §111.175, Surrender of License. This new section was former §111.183. The proposed rules add a new subsection (d) to clarify that §111.175 (former §111.183) does not apply to licenses that are subject to the new §111.176, which implements HB 1899. (Bill Implementation Changes)

The proposed rules add new §111.176, Automatic Denials and Revocations. This new section implements HB 1899, Section 8, and specifically new Texas Occupations Code §108.052 and §108.053. These provisions apply to all licenses under this chapter. (Bill Implementation Changes)

The proposed rules repeal Subchapter S. Enforcement Provisions.

Subchapter S is being eliminated, and the complaints and enforcement provisions are being combined under Subchapter R. (Terminology and Other Clean-up Changes)

The proposed rules repeal §111.180, Administrative Penalties and Sanctions. This section has been relocated to new §111.172. (Terminology and Other Clean-up Changes)

The proposed rules repeal §111.181, Enforcement Authority. This section has been relocated to new §111.173. (Terminology and Other Clean-up Changes)

The proposed rules repeal §111.182, Refunds. This section has been relocated to new §111.174. (Terminology and Other Clean-up Changes)

The proposed rules repeal §111.183, Surrender of License. This section has been relocated to new §111.175. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter T. Screening Procedures.

The proposed rules amend §111.192, Newborn Hearing Screening. The proposed rules update the cross-reference to the applicable rules. The cross-referenced rules require referral as soon as possible, but in no case more than 7 days after identification. The proposed rules remove the two-day referral requirement and the specific section citations. The proposed rules cite to the appropriate rule chapters and require licensees to comply with the requirements contained within. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter U. Fitting and Dispensing of Hearing Instruments.

The proposed rules repeal §111.200, Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments. The proposed rules implement HB 2847, Article 10 by repealing the requirement for an audiologist or an intern in audiology, who fits and dispenses hearing instruments, to register with the Department the person's intention to fit and dispense hearing instruments. (Bill Implementation Changes)

The proposed rules amend §111.201, General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments. The proposed rules implement HB 2847, Article 10 by removing language regarding the audiologist or the intern in audiology being "registered" to fit and dispense hearing instruments and by requiring inclusion of the Department's website address in written contracts. Any changes to the written contract provisions in §111.220, Joint Rules on Fitting and Dispensing Hearing Instruments, will need to be made separately in conjunction with the Hearing Instrument Fitters and Dispensers Advisory Board. (Bill Implementation Changes)

The proposed rules under §111.201 also update the terminology in paragraph (2) to use gender-neutral language and make other clean-up changes in paragraph (2). (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter V. Telehealth.

The proposed rules amend §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists. The proposed rules make clean-up changes to subsections (e) and (j). (Terminology and Other Clean-up Changes)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state as a result of enforcing or administering the proposed rules. It is estimated that the costs to administer or enforce the proposed rule changes to be minimal, if any, to the State. The activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising forms, publications, and website information. There is no anticipated reduction in costs to the State. A reduction in costs only results when duties and functions are removed from the Department by the rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to local government as a result of enforcing or administering the proposed rules. Local government does not regulate state licensure of speech-language pathologists or audiologists.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to state government as a result of enforcing or administering the proposed rules. An increase in revenue only results when new or increased fees are paid to the agency. No new fees or increased fees have been proposed. There will be no fee required for the new Retired Voluntary Charity Care Status License. HB 2059 sets out the requirement for licensees to complete the human trafficking prevention training and requires the Health and Human Services Commission (HHSC) to provide at least one free human trafficking prevention training option. If a licensee chooses to pay a fee for the required training, the cost is discretionary and the fee would be paid to the training provider and not to the Department. In addition, no existing fees are removed by the proposed rules. A loss in revenue only results when fees paid to the agency are removed by the rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rules. Fees associated with the program are remitted to the state and not to local governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the implementation of HB 1899, HB 2059, HB

2847, and HB 2680 for more effective regulation of the Speech-Language Pathology and Audiology Program. In implementing these bills, the rules will align with the updated statutes and will notify licensees and the public regarding requirements affecting this program. In implementing HB 2059, the HHSC-approved human trafficking prevention training courses will educate and bring awareness to licensees on how to identify the signs of human trafficking, which is a benefit to the public. In implementing HB 2847, individuals who assist the agency with complaints and investigations will be immune from liability, which may increase availability of subject matter experts and could lead to a faster resolution of complaints and investigations. In implementing HB 2680, certain retired health care practitioners will be allowed to perform charity care with reduced licensing requirements at no cost.

The proposed rules will also benefit licensees by allowing licensees to include ASHA-credential information in addition to license title information and by allowing licensees to carry a license identification card when the licensee does not have a primary office or place of employment. These same rules also benefit the public by providing additional information about the licensees.

The public and the licensees will also benefit from the clean-up changes made to the rules throughout the chapter. These changes will result in rules that align with current agency practice, conform to the enabling statute, function more efficiently and effectively, and are more user-friendly. An effective regulatory program for speech-language pathologists and audiologists enhances the public health, safety, and welfare.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Regarding the human trafficking prevention training, HB 2059 sets out the requirement for licensees to complete the training, and it requires the Health and Human Services Commission (HHSC) to approve these training courses and to provide at least one free training course option. If a licensee chooses to pay a fee for the required training, that cost would be discretionary on the part of the licensee and would not be a result of the Department's proposed rules. Additionally, any cost to attend a human trafficking prevention training course would be established by the training provider and therefore cannot be estimated by the Department. Any costs associated with the human trafficking prevention training are a result of the new statute, Texas Occupations Code, Chapter 116, as added by HB 2059. There are no costs imposed by the Department's proposed rules.

Regarding the updates to the written contracts, HB 2847, Article 10 requires certain license holders to have the Department's website address included on their written contracts. License holders should be able to provide an updated written agreement for little or no cost. For those license holders whose contracts do not already include the required language, the Department anticipates that it will require a one-time update to their electronic forms. Since each written contract is customized to the client, it will not place a burden on the license holder to add the required information. The Department's information would only need to be added to a template one time and would not need to be changed with each new contract. Any costs associated with the contract changes would be miniscule and are a result of

changes to the statute made by HB 2847, Article 10. There are no costs imposed by the Department's proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules implement HB 2059 and create a new regulation (rule) requiring licensees under Chapter 401 to complete a HHSC-approved human trafficking prevention training course as a condition of license renewal. This requirement becomes effective September 1, 2020. The proposed rules also implement HB 2680 and create new regulations (rules) allowing for certain retired health care practitioners who perform volunteer charity care to obtain a newly-created Retired Voluntary Charity Care Status License, which has reduced licensing requirements.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement changes due to HB 1899, HB 2059, HB 2847, and HB 2680; implement changes recommended by the Licensing Workgroup; and make terminology and other clean-up changes. The proposed rules repeal the prohibition on listing the American Speech-Language-Hearing Association (ASHA) Clinical Fellow (CF) credential in the intern's title. The proposed rules remove the requirement for an audiologist or an intern in audiology, who fits and dispenses hearing instruments, to register with the Department the person's intention to fit and dispense hearing instruments.
7. The proposed rules do increase or decrease the number of individuals subject to the rule's applicability. The proposed rules

implementing HB 2680 allow for certain retired health care practitioners who perform charity work to obtain a newly-created Retired Voluntary Charity Care Status License, which has reduced licensing requirements. The new rules will apply to those practitioners.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

16 TAC §111.13

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.13. *Officers.*

(a) (No change.)

(b) The presiding officer shall preside at all meetings at which the presiding officer [he or she] is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory 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.

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SUBCHAPTER C. EXAMINATIONS

16 TAC §111.20, §111.23

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.20. *License Examination--General Requirements.*

The examination required by the Act shall consist of a written examination and a jurisprudence examination [Jurisprudence Examination].

§111.23. *License Examination--Jurisprudence Examination.*

(a) The department shall develop and administer a jurisprudence examination [Jurisprudence Examination] to determine an applicant's knowledge of the Act, this chapter, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The department shall revise the jurisprudence examination [Jurisprudence Examination] as needed.

(c) All applicants for licensure shall submit proof of successful completion of the jurisprudence examination [Jurisprudence Examination] at the time of application, unless applying for an upgrade. The jurisprudence examination [Jurisprudence Examination] must be completed no more than 12 months prior to the date of licensure application.

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

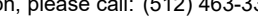
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SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.35, §111.37

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.35. Speech-Language Pathology License--Application and Eligibility Requirements.

(a) (No change.)

(b) An applicant for a speech-language pathology license must submit the following required documentation:

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

(8) proof of successfully completing the jurisprudence examination [~~Texas Jurisprudence Examination~~] under §111.23; and

(9) (No change.)

(c) If not previously submitted when applying for an assistant or intern license, an applicant for a speech-language pathology license must submit a completed legible set of fingerprints, on a department-approved form, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) - (f) (No change.)

§111.37. Speech-Language Pathology License--License Terms; Renewals.

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs [; however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in speech-language pathology.

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

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SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.41, 111.42, 111.45, 111.47

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.41. Intern in Speech-Language Pathology License--Internship and Supervision Requirements.

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

(g) Changes in Internship. Prior to implementing changes in the internship, approval from the department is required.

(1) If the intern changes the intern's [his or her] supervisor or adds additional supervisors, a current Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor and approved by the department before the intern may resume practice as prescribed under subsection (c).

(2) If the intern changes the intern's [his or her] supervisor, the Speech-Language Pathology Report of Completed Internship Form shall be completed by the former supervisor and the intern and submitted to the department upon completion of that portion of the internship. It is the decision of the former supervisor to determine whether the in-

ternship is acceptable. The department shall review the form and inform the intern of the results.

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

(5) If the intern changes the intern's [his or her] employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall notify the department in a manner prescribed by the department of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(h) (No change.)

§111.42. Intern in Speech-Language Pathology License--Practice and Duties of Interns.

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

(c) The intern must use "Intern SLP" or "SLP Intern" if the intern wishes to shorten the intern's professional title.

~~[(e) An intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.]~~

(d) An intern who is pursuing the ASHA Clinical Fellow credential may use "SLP-CF" or "CF" in the intern's title, in addition to "Intern SLP", "SLP Intern", or the full professional title. The "SLP-CF" or "CF" credential indicator is not a substitute for the use of "Intern SLP", "SLP Intern", or the full professional title.

(e) [(d)] If the intern wishes to continue to practice after the completion of the internship specified in §111.41(d), the intern shall apply for a speech-language pathology license under Subchapter D, if the intern passed the examination referenced in §111.21.

(f) [(e)] The intern may continue to practice while awaiting the processing of the speech-language pathology license if the intern meets the following conditions:

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

§111.45. Intern in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) (No change.)

(b) An applicant for an intern in speech-language pathology license must submit the following required documentation:

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

(7) proof of successfully completing the jurisprudence examination [Texas Jurisprudence Examination] under §111.23; and

(8) (No change.)

(c) If not previously submitted when applying for an assistant license, an applicant for an intern in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) (No change.)

§111.47. Intern in Speech-Language Pathology License--License Terms; Renewals.

(a) Pursuant to §51.203(b), ~~an~~ [An] intern in speech-language pathology license is valid for one year from the date of issuance and may be renewed annually.

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs~~;~~ however, the licensee does not need to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in speech-language pathology.

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 F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.52, 111.55, 111.57

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.52. *Assistant in Speech-Language Pathology License--Practice and Duties of Assistants.*

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

(e) An assistant may represent special education and speech pathology at the Admission, Review, and Dismissal (ARD) meetings with the following stipulations:[-]

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

(3) The assistant may attend, with written approval of the supervisor, a student's annual review ARD meeting if the meeting involves a student for whom the assistant provides services. If an assistant attends a meeting as provided by this rule, the supervisor is not required to attend the meeting. A supervisor must attend an ARD meeting if the purpose of the meeting is to develop a student's initial Individual Education Program (IEP) or if the meeting is to consider the student's dismissal, unless the supervisor has submitted the supervisor's [his or her] recommendation in writing on or before the date of the meeting.

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

(f) (No change.)

§111.55. *Assistant in Speech-Language Pathology License--Application and Eligibility Requirements.*

(a) (No change.)

(b) An applicant for an assistant in speech-language pathology license must submit the following required documentation:

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

(6) proof of successfully completing the jurisprudence examination [Texas Jurisprudence Examination] under §111.23; and

(7) (No change.)

(c) An applicant for an assistant in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) (No change.)

§111.57. *Assistant in Speech-Language Pathology License--License Terms; Renewals.*

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs[; however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in speech-language pathology.

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. REQUIREMENTS FOR AUDIOLOGY LICENSE

16 TAC §111.75, §111.77

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.75. *Audiology License--Application and Eligibility Requirements.*

(a) (No change.)

(b) An applicant for an audiology license must submit the following required documentation:

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

(4) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an original evaluation form from an approved transcript evaluation service stating that the applicant's degree is a doctoral degree in audiology or a related hearing science [master's degree or higher with a major in one of the areas of communicative sciences or disorders];

(5) - (7) (No change.)

(8) proof of successfully completing the jurisprudence examination [Texas Jurisprudence Examination] under §111.23; and

(9) (No change.)

(c) If not previously submitted when applying for an assistant or intern license, an applicant for an audiology license must submit a completed legible set of fingerprints, on a form prescribed by the de-

partment, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) - (f) (No change.)

§111.77. *Audiology License--License Terms; Renewals.*

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs[; however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(#)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(#)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(#)] A person whose license has expired may not practice or engage in audiology.

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

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SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE

16 TAC §§111.81, 111.85, 111.87

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.81. *Intern in Audiology License--Internship and Supervision Requirements.*

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

(e) Changes in Internship. Prior to implementing changes in the internship, written approval from the department is required.

(1) If the intern changes the intern's [his or her] supervisor or adds additional supervisors, a current Audiology Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor and approved by the department before the intern may resume practice as prescribed under subsection (c).

(2) If the intern changes the intern's [his or her] supervisor, the Audiology Report of Completed Internship Form shall be completed by the former supervisor and the intern and submitted to the department upon completion of that portion of the internship. It is the decision of the former supervisor to determine whether the internship meets the department's requirements. The department shall review the form and inform the intern of the results.

(3) A supervisor who ceases supervising an intern shall submit an Audiology Report of Completed Internship Form for the portion of the internship completed under the supervisor's [his or her] supervision. This must be submitted within 30 days of the date the supervision ended.

(4) (No change.)

(5) If the intern changes the intern's [his or her] employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement or submit in a manner prescribed by the department giving the name, address and phone number of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(f) (No change.)

§111.85. *Intern in Audiology License--Application and Eligibility Requirements.*

(a) (No change.)

(b) An applicant for an intern in audiology license must submit the following required documentation:

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

(4) proof of successfully completing the jurisprudence examination [Texas Jurisprudence Examination] under §111.23; and

(5) (No change.)

(c) If not previously submitted when applying for an assistant license, an applicant for an intern in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) (No change.)

§111.87. *Intern in Audiology License--License Terms; Renewals.*

(a) Pursuant to §51.203(b), an [An] intern in audiology license is valid for one year from the date of issuance and may be renewed annually.

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs[; however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in audiology.

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 J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

16 TAC §§111.92, 111.95, 111.97

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112,

116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.92. Assistant in Audiology License--Practice and Duties of Assistants.

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

(d) The assistant shall not:

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

(15) present written or oral reports of client information, except to the assistant's [his or her] supervisor;

(16) - (18) (No change.)

(e) (No change.)

(f) A licensed assistant in audiology may not engage in the fitting, dispensing or sale of a hearing instrument under this chapter; however, a licensed assistant in audiology who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under the person's [his or her] assistant in audiology license when performing those activities.

§111.95. Assistant in Audiology License--Application and Eligibility Requirements.

(a) (No change.)

(b) An applicant for an assistant in audiology license must submit the following required documentation:

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

(7) proof of successfully completing the jurisprudence examination [Texas Jurisprudence Examination] under §111.23; and

(8) (No change.)

(c) An applicant for an assistant in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) (No change.)

§111.97. Audiology Assistant License--License Terms; Renewals.

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs[; however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under the Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in audiology.

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SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

16 TAC §111.115, §111.117

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.115. Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements.

(a) (No change.)

(b) An applicant for a dual license in speech-language pathology and audiology must submit the following required documentation:

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

(3) proof of successfully completing the jurisprudence examination [~~Texas Jurisprudence Examination~~] under §111.23; and

(4) (No change.)

(c) If not previously submitted when applying for a full license, assistant license, or intern license, an applicant for a dual license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information, unless the applicant has already submitted fingerprints as part of a single li-

cense. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) (No change.)

§111.117. Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals.

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

(d) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs [~~;~~ however, the licensee does not need] to submit new fingerprints.

(e) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(f) [(e)] The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(g) [(f)] If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(h) [(g)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired may not practice or engage in speech-language pathology or audiology.

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SUBCHAPTER M. RETIRED VOLUNTARY CHARITY CARE STATUS LICENSE

16 TAC §§111.120 - 111.125

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.120. Applicability of Subchapter.

This subchapter implements Texas Occupations Code, Chapter 112. This subchapter applies to a person who holds a license as an audiologist, an assistant in audiology, a speech-language pathologist, or an assistant in speech-language pathology, or who holds a dual license in speech-language pathology and audiology.

§111.121. Definitions.

As used in this subchapter:

(1) Voluntary charity care--The practice or services of a licensee under this subchapter without compensation or expectation of compensation.

(2) Compensation--Direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

§111.122. Eligibility and Initial Application.

(a) To be eligible for a retired voluntary charity care status license, the person must:

(1) hold an active license listed under §111.120;

(2) not have any pending or current disciplinary actions against the person or the person's license; and

(3) not be employed, under contract, or otherwise engaged in the practice of speech-language pathology or audiology for compensation.

(b) To apply for a retired voluntary charity care status license, the person must:

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

(2) certify in writing that the person is retired and will provide only voluntary charity care; and

(3) submit any license application fee required under §111.160.

(c) The person must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines. The department will notify the licensee if the person needs to submit new fingerprints.

§111.123. Practice and Disciplinary Actions.

(a) A person holding a retired voluntary charity care status license:

(1) may not provide speech-language pathology or audiology services for compensation; and

(2) is limited to providing only those services authorized under the active license that the person held prior to holding the retired voluntary charity care status license.

(b) A person holding a retired voluntary charity care status is subject to disciplinary action for:

(1) a violation of the Act or the rules adopted under this chapter;

(2) obtaining, or attempting to obtain, retired voluntary charity care status by submitting false or misleading information to the department; or

(3) engaging in the practice of speech-language pathology or audiology for compensation.

§111.124. License Term; Renewal.

(a) A retired voluntary charity care status license is valid for two years from the date of issuance and may be renewed biennially.

(b) To renew a retired voluntary charity care status license, a licensee must:

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

(2) complete the continuing education hours as required under §111.130;

(3) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(4) submit any license renewal fee required under §111.160.

(c) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license.

(d) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(e) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(f) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(g) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(h) A person whose license has expired may not practice or engage in speech-language pathology or audiology or perform voluntary charity care.

§111.125. Returning to Active Status.

(a) A person who holds a retired voluntary charity care status license and who wants to return to active status must:

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

(2) complete any additional hours of continuing education under §111.130 to meet the active license renewal requirements;

(3) certify completion of the required continuing education hours; and

(4) submit the license renewal fee for the applicable active license under §111.160.

(b) A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(c) The department may require additional information, education, examinations, or training from a person who has been on retired voluntary charity care status for more than two years before returning to active status.

(d) The application must be approved by the department before the person can return to active status and provide speech-language pathology or audiology services for compensation.

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SUBCHAPTER N. CONTINUING PROFESSIONAL EDUCATION

16 TAC §§111.130 - 111.132

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.130. Continuing Professional Education--Requirements and Hours.

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

(e) The following minimum continuing education hours and units are required to renew a license:

(1) (No change.)

(2) Dual license in speech-language pathology and audiology (two-year term): 30 clock hours (three CEUs), with 2 clock hours (0.2 CEUs) in ethics; ~~and~~

(3) Intern in speech-language pathology license (one-year term): 10 clock hours (1 CEUs), with 1 clock hour (0.1 CEU) in ethics;[-]

(4) Retired voluntary charity care license (two-year term): 10 clock hours (one CEUs), with 1 clock hour (0.1 CEUs) in ethics; and

(5) Retired voluntary charity care license for a dual license in speech-language pathology and audiology (two-year term): 15 clock hours (1.5 CEUs), with 1 clock hour (0.1 CEUs) in ethics.

(f) - (g) (No change.)

§111.131. Continuing Professional Education--Courses and Credits.

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

(d) Completion of the jurisprudence examination [Jurisprudence Examination] shall count as one hour of the continuing education requirement for professional ethics per renewal period.

§111.132. Continuing Professional Education--Records and Audits.

(a) The licensee shall be responsible for maintaining a record of the licensee's [~~his or her~~] continuing education experiences for at least three years.

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

(d) The audit process shall be as follows.

(1) The department shall select for audit a random sample of licensees [~~license holders~~] for each renewal month. Licensees [~~License holders~~] will be notified of the continuing education audit when they receive their renewal documentation.

(2) (No change.)

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee [~~license holder~~].

(4) (No change.)

(5) Licenses will not be renewed until the continuing education [~~Continuing Education~~] requirements have been met.

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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§111.150, 111.151, 111.154, 111.155

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.150. Changes of Name, Address, or Other Information.

(a) (No change.)

(b) A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name.

(c) To receive a duplicate license, the [The] licensee shall submit the duplicate/replacement fee required under §111.160.

§111.151. *Consumer Information and Display of License.*

(a) A licensee shall notify each client of the name, mailing address, telephone number and website of the department for the purpose of directing complaints to the department. A licensee shall display this notification:

(1) on a sign prominently displayed in the primary office or place of employment [place of business] of the [each] licensee, if any; and

(2) (No change.)

(b) A licensee shall display the license certificate in the primary office or place of employment. In the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card [with a current license card as issued by the department in the primary location of practice].

(c) A licensee shall not display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.

(d) [(e)] A licensee shall not make any alteration on a license certificate or identification card [official documents issued by the department].

§111.154. *Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised.*

(a) A licensee must have two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. One year of the licensee's internship shall be counted toward the two years of experience. [The licensee's internship year shall be counted toward the two years of experience.]

(b) - (g) (No change.)

(h) A licensed intern or assistant shall abide by the decisions made by the [his or her] supervisor relating to the intern's or assistant's practice and duties. If the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the department and any other appropriate authority.

§111.155. *Standards of Ethical Practice (Code of Ethics).*

(a) A licensee shall:

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

(16) be subject to disciplinary action by the department if the licensee [or registrant] is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B (effective until January 1, 2021) and Chapter 56B (effective on January 1, 2021) [Article 56.34 (relating to the Crime Victims Compensation Act)];

(17) - (18) (No change.)

(b) A licensee shall not:

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

(4) delegate any service requiring professional competence of a licensee [or registrant] to anyone not licensed [or registered] for the performance of that service;

(5) - (9) (No change.)

(10) participate in activities that constitute a conflict of professional interest which may include the following:

(A) (No change.)

(B) lack of accuracy in the performance description of a product a licensee [or registrant] has developed; or

(C) (No change.)

(11) use the licensee's [his or her] professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee [or registrant] has disclosed to the client, intern, assistant, or student the nature of the licensee's [or registrant's] personal gain or profit;

(12) misrepresent the licensee's [his or her] training or competence;

(13) - (15) (No change.)

(16) intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage for or from any health care professional[. The provisions of the Texas Health and Safety Code §161.091, concerning the prohibition of illegal remuneration apply to licensees];

(17) - (18) (No change.)

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

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SUBCHAPTER Q. FEES

16 TAC §111.160

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.160. Fees.

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

(i) Retired Voluntary Charity Care Status License:

(1) Initial application fee--\$0.

(2) Renewal application fee--\$0.

(j) [~~(j)~~] A duplicate/replacement fee for a license or certificate issued under this chapter is \$25.

(k) [~~(j)~~] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(l) [~~(k)~~] A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(m) [~~(l)~~] The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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SUBCHAPTER R. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§111.171 - 111.176

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Sub-

chapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.171. Complaints [Regarding Standard of Care].

(a) The commission has adopted rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031. These rules are located at 16 Texas Administrative Code Chapter 100.

(b) A qualified person may assist the department in the review and investigation of complaints and will be immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(c) The provisions regarding the confidentiality of complaint and disciplinary information are provided under Texas Occupations Code §51.254.

§111.172. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 401, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 401, as applicable, and any associated rules.

§111.173. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 401 and any associated rules may be used to enforce Texas Occupations Code, Chapter 401 and this chapter.

§111.174. Refunds.

(a) The commission or executive director may order an audiologist to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period required by the rules adopted under Subchapter W (regarding Joint Rule Regarding the Sale of Hearing Instruments).

(b) If the 30-day period ends on a Sunday or a holiday, then the 30-day period shall not expire until the next business day.

(c) The licensee shall have thirty (30) days from the date of a consumer's return of the hearing instrument(s) to reimburse the consumer.

(d) In the event that the licensee fails to reimburse the consumer within the prescribed period in subsection (c), then the licensee may be subject to additional penalties and/or sanctions provided for under the Act and rules.

§111.175. Surrender of License.

(a) A licensee may offer to surrender the license to the executive director. The executive director will accept the voluntary surrender of the license and void it immediately.

(b) When a licensee has offered the surrender of the license after a complaint has been filed alleging violations of the Act or this chapter, and the executive director has accepted the surrender, that surrender is deemed to be the result of a formal disciplinary action.

(c) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

(d) This section does not apply to a license that is subject to §111.176.

§111.176. Automatic Denials and Revocations.

(a) The department shall deny an application for a license, and shall revoke a license issued under Chapter 401, under the circumstances set forth in Texas Occupations Code, Chapter 108, Subchapter B.

(b) A person whose application for a license has been denied, or whose license has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B, may reapply or seek reinstatement as provided by that subchapter.

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SUBCHAPTER S. ENFORCEMENT PROVISIONS

16 TAC §§111.180 - 111.183

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.180. *Administrative Penalties and Sanctions.*

§111.181. *Enforcement Authority.*

§111.182. *Refunds.*

§111.183. *Surrender of License.*

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SUBCHAPTER T. SCREENING PROCEDURES

16 TAC §111.192

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.192. *Newborn Hearing Screening.*

(a) (No change.)

(b) Individuals licensed under this Act are subject to 25 TAC Chapter 37, regarding reporting hearing screening or audiologic outcomes to the Department of State Health Services (DSHS) through the designated electronic tracking system and 40 TAC Chapter 108 [~~§108.9~~], regarding referral of children under the age of three years to Early Childhood Intervention (ECI) [~~within two days of identification~~].

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SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §111.200

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.200. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.

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16 TAC §111.201

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.201. General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology, who fits and dispenses ~~registered to fit and dispense~~ hearing instruments, shall:

(1) (No change.)

(2) insure that all equipment used by the licensee within the licensee's [his or her] scope of practice is [shall be] calibrated in [to insure] compliance with the American National Standards Institute (ANSI), S3.6, 1989, Specification for Audiometers, or S3.6, 1996, Specification for Audiometers;

(3) receive a written statement before selling a hearing instrument that is signed by a licensed physician preferably one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or over, the ~~registered~~ audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the ~~registered~~ audiologist or intern in audiology:

(A) - (B) (No change.)

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish medical evaluation before purchasing a hearing instrument;" ~~[and]~~

(4) verify appropriate fit of the hearing instrument(s), which may include real ear measures, functional gain measures, or other professionally accepted measures; and

(5) use a written contract that contains the department's name, mailing address, telephone number, and Internet website address, when providing services in this state.

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SUBCHAPTER V. TELEHEALTH

16 TAC §111.212

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§111.212. Requirements for the Use of Telehealth by Speech-Language Pathologists.

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

(e) A provider shall only utilize technology that the provider is [which they are] competent to use as part of the provider's [their] telehealth services.

(f) - (i) (No change.)

(j) A provider shall be aware of the client's or consultant's [client or consultant] level of comfort with the technology being used as part of the telehealth services. The provider shall [and] adjust the provider's [their] practice to maximize the client's or consultant's [client or consultant] level of comfort.

(k) - (p) (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 February 10, 2020.

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General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3306



CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter B, §112.13; Subchapter C, §§112.23 - 112.26; Subchapter D, §§112.30, 112.32, and 112.33; Subchapter E, §112.40 and §112.42; Subchapter F, §112.52 and §112.53; Subchapter G, §112.60 and §112.61; Subchapter H, §112.71; Subchapter J, §112.91 and §112.98; Subchapter L, §112.110; and Subchapter M, §112.120; proposes new rules at Subchapter C, §112.21 and §112.22; and Subchapter M, §§112.121 - 112.125; and proposes the repeal of existing rules at Subchapter C, §112.21 and §112.22; and Subchapter N, §§112.130 - 112.132 and 112.134, regarding the Hearing Instrument Fitters and Dispensers Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 112 implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers. The proposed rules are necessary to implement bills from the 86th Legislature, Regular Session (2019); clarify the submission of surety bonds or other financial security to the Department; address the permit extension requirements; and make terminology and other clean-up changes.

Bill Implementation Changes

The proposed rules are necessary to implement House Bill (HB) 1899, HB 2059, HB 2699, and HB 2847 (Article 7, §§7.003, 7.004, and 7.008), 86th Legislature, Regular Session (2019).

HB 1899 requires automatic license denial or revocation for a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. The new statutory provisions under Texas Occupations Code, Chapter 108, Subchapter B, apply to certain health care professionals, including hearing instrument fitters and dispensers. The proposed rules add provisions providing notice of these new requirements.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Hearing instrument fitters and dispensers are affected by this bill. The proposed rules implement HB 2059 and the new statutory provisions under Texas Occupations Code, Chapter 116 by requiring licensed hearing instrument fitters and dispensers to take the training course for each license renewal on or after September 1, 2020.

HB 2699 revises and updates the license examination provisions under Texas Occupations Code, Chapter 402. The proposed rules make the necessary changes, which are primarily found in the Examinations subchapter.

HB 2847 is an omnibus bill that affects multiple programs. Article 7 of the bill applies to multiple programs, including the Hearing Instrument Fitters and Dispensers program. The proposed rules implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

Surety Bond and Other Financial Security Changes

The proposed rules are necessary to clarify the requirements of submitting a surety bond or other financial security to the Department. The current rules require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security in the prescribed amount to the Department. As required by statute, this financial security covers the business entity's actions and the actions of the license holders it employs. HB 4007, 85th Legislature, Regular Session (2017) removed the requirement for the owners, partners, or chief executive officers of these business entities to be licensed hearing instrument fitters and dispensers, but the business entities are still required to submit the financial security. The proposed rules clarify how a business entity submits the financial security for itself and the license holders it employs. The proposed rules also specify the times when the business entity is required to submit the financial security to the Department.

The proposed rules also require submission of a surety bond or other financial security at the first license renewal on or after September 1, 2020. This is a one-time requirement; however, when this program was transferred to the Department pursuant to SB 202, 84th Legislature, Regular Session (2015), the applicable business entities did not submit new financial security. The Department has updated the surety bond form, including having the surety bond payable to the Department, not to the former licensing board. This one-time requirement will ensure that the Department has updated financial security on file for all the applicable business entities and the license holders they employ.

Permit Extension Changes

The proposed rules are necessary to address the timing requirements for requesting a permit extension for apprentice permits and temporary training permits. The proposed rules specify the timing for submitting an extension request if the person will not or does not complete the permit requirements during the term of the permit. The proposed rules also explain the ramifications of not requesting an extension within the grace period.

Terminology and Other Clean-up Changes

The proposed rules are necessary to make terminology and other clean-up changes to the rules. These changes include: replacing existing language with gender neutral language; removing unnecessary provisions; updating terminology; inserting

the standardized criminal history background check language and updating the provision regarding fingerprints; and consolidating the complaint and enforcement provisions into one subchapter.

The proposed rules were presented at the Hearing Instrument Fitters and Dispensers Advisory Board (Advisory Board) meeting on January 22, 2020. There was less than a quorum of members present for the discussion, so the Advisory Board was not able to make a recommendation regarding the proposed rules. The Department is publishing the proposed rules as presented without the Advisory Board's recommendation.

SECTION-BY-SECTION SUMMARY

The proposed rules amend Subchapter B. Hearing Instrument Fitters and Dispensers Advisory Board.

The proposed rules amend §112.13, Officers. The proposed rules update the terminology in subsection (b) to use gender neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter C. Examinations.

The proposed rules add new §112.21, Examination Contents and Test Administration. This new section was former §112.22, Examination Tests and Contents. The order of §112.21 and §112.22 has been switched due to the terminology changes regarding "examination" and "test" in HB 2699. The revised order of the rules improves the flow and readability of the provisions in this subchapter. The title of the section has been changed to reflect the contents of the section. The proposed rules also update the references in subsections (a) and (b) (former §112.22(a) and (b)) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes)

In addition, the proposed rules amend subsection (b)(1) (former §112.22(b)(1)) to remove the reference to the specific entity administering the written test and replace it with a reference to the department's designee. The change makes the provisions in subsection (b) consistent for all three tests, and it is consistent with some of the Department's other programs where an exam is administered. The change also allows flexibility in what entity administers the written test. (Terminology and Other Clean-up Changes)

The proposed rules repeal existing §112.21, Examination Qualifications. The proposed rules repeal this section and relocate the provisions to new §112.22. (Bill Implementation Changes)

The proposed rules add new §112.22, Examination Qualification Process. This new section was former §112.21, Examination Qualifications. The order of §112.21 and §112.22 has been switched due to the terminology changes regarding "examination" and "test" in HB 2699. The revised order of the rules improves the flow and readability of the provisions in this subchapter. The title of the section has been changed to reflect the contents of the section. The proposed rules also update the references in subsections (a), (b), (c), and (d) (former §112.21(a), (b), (c), and (d)) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes)

The proposed rules under new §112.22 do not include former §112.21(d) regarding moral turpitude. This provision was repealed by HB 2699, Section 6, former Texas Occupations Code §402.203(c). (Bill Implementation Changes) The proposed rules also do not include former §112.21(f). This provision was out of place in this section, and it was not applicable to all three tests. (Terminology and Other Clean-up Changes)

The proposed rules repeal existing §112.22, Examination Tests and Contents. The proposed rules repeal this section and relocate the provisions to new §112.21. (Bill Implementation Changes)

The proposed rules amend §112.23, Examination and Test Results. The proposed rules change the references from "examination" to "test" as appropriate; remove the passing score of 70 percent or greater; and eliminate references to "scores" to implement HB 2699. The proposed rules separate subsection (b) into subsections (b) and (c) for clarity. The title of this section also has been updated. (Bill Implementation Changes)

The proposed rules amend §112.24, Failure of Examination or Test. The proposed rules amend §112.24 to implement HB 2699, Section 3, Texas Occupations Code §402.205(c) and (d). The proposed rules use subsections to address separate concepts. The proposed rules also update the title of this section. (Bill Implementation Changes)

The proposed rules amend §112.25, Practical Test Proctors. The proposed rules change the references from "examination" to "test" to implement HB 2699, Section 1, Texas Occupations Code §402.104(a) and (d). The proposed rules also update the title of the section. (Bill Implementation Changes) The proposed rules also make clean-up changes to subsection (b). (Terminology and Other Clean-up Changes)

The proposed rules amend §112.26, Jurisprudence Test. The proposed rules change the references from "examination" to "test" to implement HB 2699. The proposed rules also update the title of this section. (Bill Implementation Changes) The proposed rules also make terminology and clean-up changes to this section. (Terminology and Clean-up Changes)

The proposed rules amend Subchapter D. Hearing Instrument Fitter and Dispenser License.

The proposed rules amend §112.30, Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules under §112.30 add new subsection (e) to clarify the requirements of submitting a surety bond or other financial security. The current financial security requirements are located under §112.60, and they require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security to the Department. As required by statute, the financial security covers the business entity's actions and the actions of the license holders it employs.

The proposed rules under subsection (e) explain how a business entity files the surety bond or other financial security for itself and its employees who are applying for a license. The proposed rules provide that the surety bond or financial security is provided by the business entity to the license applicant, who will file the surety bond or financial security with the license application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form will be created for the business entity to identify the employee/license applicant who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The proposed rules under §112.30 add new subsection (g) to implement HB 1899, Section 8. New Texas Occupations Code §108.052 requires denial of an application from a person who is

convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. (Bill Implementation Changes)

The proposed rules amend §112.32, Hearing Instrument Fitter and Dispenser License--License Term; Renewals. The proposed rules amend subsection (d) to insert the standardized criminal history background check language. The proposed rules also update the provision on whether updated fingerprints will be required at renewal. The proposed rules also replace "licensee" with "license holder" for consistency purposes. (Terminology and Other Clean-up Changes)

The proposed rules under §112.32 add new subsection (e) to require submission of a surety bond or other financial security at the first license renewal on or after September 1, 2020. This is a one-time requirement; however, when this program was transferred to the Department pursuant to SB 202, 84th Legislature, Regular Session (2015), the applicable business entities did not submit new financial security. The Department has updated the surety bond form, including having the surety bond payable to the Department, not to the former licensing board. This one-time requirement will ensure that the Department has updated financial security on file for all the applicable business entities and the license holders they employ.

The proposed rules under subsection (e) explain how a business entity files the surety bond or other financial security for itself and its employees who are renewing their licenses. The proposed rules provide that the surety bond is provided by the business entity to the license holder, who will file the surety bond with the license renewal application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form will be created for the business entity to identify the employee/license holder who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The proposed rules under §112.32 also add new subsection (f) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The proposed rules also consolidate current subsections (e) and (f) into one subsection and re-letter it as subsection (g). The text of subsections (e) and (f) has been condensed and replaced with cross-references to the statutory provisions. (Terminology and Other Clean-up Changes)

The proposed rules amend §112.33, Application by License Holder From Another State. The proposed rules change the reference in subsection (d) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes) The proposed rules amend subsection (e) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules under §112.33 also add subsection (g) to implement HB 1899, Section 8. New Texas Occupations Code §108.052 requires denial of an application from a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. (Bill Implementation Changes)

The proposed rules under §112.33 add new subsection (h) to clarify the requirements of submitting a surety bond or other financial security. The current financial security requirements are located under §112.60, and they require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to

submit a surety bond or other acceptable form of financial security to the Department. As required by statute, the financial security covers the business entity's actions and the actions of the license holders it employs.

The proposed rules under subsection (h) explain how a business entity files the surety bond or other financial security for itself and its employees who are applying for a license. The proposed rules provide that the surety bond or financial security is provided by the business entity to the license applicant, who will file the surety bond or financial security with the license application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form will be created for the business entity to identify the employee/license applicant who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The proposed rules under §112.33 also amend subsections (i) and (j) (former subsections (g) and (h)) to implement HB 2699, Section 5, Texas Occupations Code §§402.209(e) and (f). (Bill Implementation Changes)

The proposed rules amend Subchapter E. Apprentice Permit.

The proposed rules amend §112.40, Apprentice Permit--Application and Eligibility Requirements. The proposed rules change the references in subsection (c) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes) The proposed rules also amend subsection (d) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend §112.42, Apprentice Permit--Permit Term; Extension. The proposed rules amend subsection (b) to specify the timing of when a person must submit the apprentice permit extension request. The proposed rules also add a new subsection (e) to explain the ramifications of not requesting an extension within the 90-day grace period. (Permit Extension Changes) The proposed rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter F. Temporary Training Permit.

The proposed rules amend §112.52, Temporary Training Permit--Permit Term; Extension. The proposed rules amend subsection (b) to specify the timing of when a person must submit the temporary training permit extension request. The proposed rules also add a new subsection (e) to explain the ramifications of not requesting an extension within the 90-day grace period. (Permit Extension Changes)

The proposed rules amend §112.53, Temporary Training Permit--Supervision and Temporary Training Requirements. The proposed rules update the terminology in subsection (c) to use gender neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter G. Financial Security Requirements.

The proposed rules amend §112.60, Filing Surety Bond or Other Form of Financial Security. The proposed rules clarify the requirements of submitting a surety bond or other financial security to the Department. The current rules require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security in the prescribed amount to the Department. As required

by statute, this financial security covers the business entity's actions and the actions of the license holders it employs. HB 4007, 85th Legislature, Regular Session (2017) removed the requirement for the owners, partners, or chief executive officers of these business entities to be licensed hearing instrument fitters and dispensers, but the business entities are still required to submit the financial security. The proposed rules clarify how a business entity submits the financial security for itself and the license holders it employs. (Surety Bond Clarification Changes)

The proposed rules under §112.60 add a new subsection (b) to clearly state in the rules that the financial security covers the actions, conduct, or liability of the business entity and the license holders it employs as required by statute. The proposed rules add a new subsection (d) that identifies the three times when a business entity needs to file the financial security with the Department and includes cross-references to the applicable sections. The proposed rules amend re-lettered subsection (e) (former subsection (c)) to clarify that the referenced "license" is the employee's license. The proposed rules also make clean-up changes to the financial security references in re-lettered subsections (e) and (f) (former subsections (c) and (d)) for consistency purposes in this section. (Surety Bond Clarification Changes)

The proposed rules amend §112.61, Recovery on Surety Bond or Other Form of Financial Security. The proposed rules remove the statutory cross-reference and include the text from Texas Occupations Code §402.405 in order to clarify in the rules that the financial security covers the actions of the business entity and the license holders employed by the business entity. (Surety Bond Clarification Changes)

The proposed rules amend Subchapter H. Continuing Education Requirements.

The proposed rules amend §112.71, Continuing Education--Records and Audits. The proposed rules update the terminology in subsections (a) and (c) to use gender neutral language. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter J. Responsibilities of the Licensee.

The proposed rules amend §112.91, Change of Name, Address, or Other Information. The proposed rules change the reference under subsection (a) from "licensee," which is defined to include license holders and permit holders, to "license holder or permit holder." This terminology change is necessary for clarity purposes due to the addition of subsection (b), which only applies to license holders. (Terminology and Other Clean-up Changes)

The proposed rules add a new requirement under subsection (b) for a license holder who changes employers to submit a copy of the surety bond or other form of financial security from the license holder's new employer. In the alternative, the new employer may submit the financial security directly to the department. A new form will be developed to implement this requirement. (Surety Bond Clarification Changes)

The proposed rules amend §112.98, Code of Ethics. The proposed rules update the terminology in subsections (c) and (d) to use gender neutral language. The proposed rules also make a clean-up change to subsection (d). (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter L. Fees.

The proposed rules amend §112.110, Fees. The proposed rules change the references from "examination" to "test" in subsection (e) to implement HB 2699. (Bill Implementation Changes)

The proposed rules amend Subchapter M. Complaints.

The proposed rules amend the title of Subchapter M to read "Complaints and Enforcement Provisions." The proposed rules combine Subchapters M and N into one subchapter. The enforcement sections under Subchapter N are being relocated to Subchapter M. (Terminology and Other Clean-up Changes)

The proposed rules amend §112.120, Complaints. The proposed rules update the title of §112.120 to reflect the expanded scope of the section. The proposed rules add new subsection (b) as a notice to licensees and to the public regarding qualified persons, including licensees and advisory board members, assisting the department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

The proposed rules under §112.120 also add new subsection (c) as a notice to licensees and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §402.154 addressed these issues for hearing instrument fitters and dispensers. HB 2847, Article 7, §7.008, repealed §402.154 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including hearing instrument fitters and dispensers. (HB 2847, §7.004). (Bill Implementation Changes)

The proposed rules add new §112.121, Administrative Penalties and Sanctions. This new section was former §112.130. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §112.122, Enforcement Authority. This new section was former §112.131. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §112.123, Refund for Hearing Instrument. This new section was former §112.132. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §112.124, Surrender of a License or Permit. This new section was former §112.134. The proposed rules also update the terminology in subsection (a) and (b) (former §112.134(a) and (b)) to use gender neutral language. (Terminology and Other Clean-up Changes) The proposed rules also add a new subsection (d) to clarify that §112.124 (former §112.134) does not apply to licenses and permits that are subject to the new §112.125, which implements HB 1899. (Bill Implementation Changes)

The proposed rules add new §112.125, Automatic Denials and Revocations. The proposed rules add a new §112.125 to implement HB 1899, Section 8, and specifically new Texas Occupations Code §108.052 and §108.053. These provisions apply to licenses and permits. (Bill Implementation Changes)

The proposed rules repeal Subchapter N. Enforcement Provisions.

Subchapter N is being eliminated, and the complaints and enforcement provisions are being combined under Subchapter M. (Terminology and Other Clean-up Changes)

The proposed rules repeal §112.130, Administrative Penalties and Sanctions. This section has been relocated to new §112.121. (Terminology and Other Clean-up Changes)

The proposed rules repeal §112.131, Enforcement Authority. This section has been relocated to new §112.122. (Terminology and Other Clean-up Changes)

The proposed rules repeal §112.132, Refund for Hearing Instrument. This section has been relocated to new §112.123. (Terminology and Other Clean-up Changes)

The proposed rules repeal §112.134, Surrender of a License or Permit. This section has been relocated to new §112.124. (Terminology and Other Clean-up Changes)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state government as a result of enforcing or administering the proposed rules. It is estimated that the costs to administer or enforce the proposed rule changes will be minimal, if any, to the State. The activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as updating licensing records, modifying or revising forms, publications, or website information. The proposed rules do not impact program costs. Many of the proposed rule changes are clean-up amendments intended to align the rules with current practice and require no implementation. There is no anticipated reduction in costs to the State. A reduction in costs only occurs when enough duties and functions are removed from the Department by the rules to result in a reduction. The changes made by the rules do not reduce the Department's workload, or result in the need for less personnel or resources.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to local government as a result of enforcing or administering the proposed rules. Local governments are not responsible for administering the state regulation of hearing instrument fitters and dispensers under Texas Occupations Code, Chapter 402.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there may be a loss in revenue to the state government as a result of enforcing or administering the proposed rules, however, the loss in revenue would be minimal and is not considered significant. Currently, a temporary training permit holder or an apprentice permit holder may extend their permit for a one-year period by paying a \$25 extension fee if the extension is requested before the permit expires. If an extension is not requested before the permit expires, a temporary training permit holder must apply for a new permit and pay \$205, and an apprentice permit holder must apply for new temporary training permit to be eligible to apply for a new apprentice permit. The total cost for an apprentice permit holder who does not request an extension in time is \$410. The proposed rules create a 90-day period following the expiration of the permit which gives the permit holder an extra period of time to request an extension and pay only a \$25 fee, instead of having to reapply for a permit or permits at a cost of \$205 or \$410. This change could result in a loss in revenue. The need to extend a permit is discretionary, and the number of permit holders who will choose to extend the license is indeterminable. Currently, only one or two permit holders on average per year fail to request an extension

before their permit's expiration. However, it varies which type of permit holder needs an extension, so no definitive revenue loss can be estimated, and it is also unknown if those one or two permit holders on average would request the extension before the 90 days elapse and benefit from the smaller fee. Although no revenue loss can be estimated, the loss in revenue would be minimal and is not considered significant.

Mr. Couvillon also has determined that there is no anticipated increase in State revenue as a result of enforcing or administering the proposed rules. An increase in revenue only results when new or increased fees are paid to the agency. No new fees or increased fees have been proposed. HB 2059 sets out the requirement for licensees to complete the human trafficking prevention training and requires the Health and Human Services Commission (HHSC) to provide at least one free human trafficking prevention training option. If a licensee chooses to pay a fee for the required training, the cost is discretionary and the fee would be paid to the training provider and not to the Department.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the local government as a result of enforcing or administering the proposed rules. Fees associated with the program are remitted to the state and not to local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the implementation of HB 1899, HB 2059, HB 2699, and HB 2847 for more effective regulation of the Hearing Instrument Fitters and Dispensers Program. In implementing these bills, the rules will align with the updated statutes and will notify licensees and the public regarding requirements affecting this program. In implementing HB 2059, the HHSC-approved human trafficking prevention training courses will educate and bring awareness to licensees on how to identify the signs of human trafficking, which is a benefit to the public. In implementing HB 2847, individuals who assist the agency with complaints and investigations will be immune from liability, which may increase availability of subject matter experts and could lead to a faster resolution of complaints and investigations.

There is also a public benefit by the Department receiving updated financial security from the applicable business entities and the license holders they employ. The financial security may be used in cases where a person is harmed by an entity engaged in the fitting and dispensing of hearing instruments or by a license holder employed by that entity as prescribed by statute and rule. Having updated financial security helps ensure that the Department will be able to file a claim against the financial security on behalf of the person harmed if the situation arises.

There will also be a benefit to permit holders for each year of the first five-year period the proposed rules are in effect. The creation of the 90-day period to apply for an extension following the expiration of a temporary training permit or an apprentice permit will allow a permit holder to obtain an extension for a \$25 fee rather than having to obtain new permits at a cost of \$205 or

\$410. The creation of the 90-day period also will save a permit holder, who does not request an extension before the expiration of the permit, many hours repeating work already completed. This change will allow a permit holder to obtain a hearing instrument fitter and dispenser license sooner and begin earning a living.

The public and the licensees will also benefit from the clean-up changes made to the rules throughout the chapter. These changes will result in rules that align with current agency practice, conform to the enabling statute, function more efficiently and effectively, and are more user-friendly. An effective regulatory program for hearing instrument fitters and dispensers protects the health, safety, and welfare of the public.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Regarding the human trafficking prevention training, HB 2059 sets out the requirement for licensees to complete the training, and it requires the Health and Human Services Commission (HHSC) to approve these training courses and to provide at least one free training course option. If a licensee chooses to pay a fee for the required training, that cost would be discretionary on the part of the licensee and would not be a result of the Department's proposed rules. Additionally, any cost to attend a human trafficking prevention training course would be established by the training provider and therefore cannot be estimated by the Department. Any costs associated with the human trafficking prevention training are a result of the new statute, Texas Occupations Code, Chapter 116, as added by HB 2059. There are no costs imposed by the Department's proposed rules.

Regarding the financial security requirements, the proposed rules would require a sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments to file financial security with the Department for an employee's first license renewal on or after September 1, 2020. This is a one-time requirement following the transfer of the program to the Department. This requirement will ensure that the Department has updated financial security from all of the applicable business entities and the license holders they employ. These business entities should be able to provide an updated surety bond for little or no cost to the entity. A surety company might charge a small fee for a copy of a surety bond, but any such fees would vary and therefore cannot be calculated.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules create a 90-day period following the expiration of a temporary training permit or apprentice permit to allow a holder of one of those permits to request an extension and pay the \$25 extension fee, rather than having to apply for a new temporary training permit or a new apprentice permit as well as a new temporary training permit. Instead of paying \$205 or \$410 in fees, the permit holder would only have to pay a \$25 extension request fee, which would result in a decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules implement HB 2059 and will create a new regulation (rule) requiring a licensed hearing instrument fitter and dispenser to complete a HHSC-approved human trafficking prevention training course as a condition of license renewal. This requirement becomes effective September 1, 2020.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules amend the existing regulations (rules) to implement changes due to HB 1899, HB 2059, HB 2699, and HB 2847 and to make clean-up changes. The proposed rules also amend the existing regulations (rules) to require submission of an updated surety bond at the licensee's first renewal on or after September 1, 2020.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Dalma Sotero, Assistant General Counsel, Texas Department of Li-

censing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

16 TAC §112.13

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.13. *Officers.*

(a) (No change.)

(b) The presiding officer shall preside at all meetings at which the presiding officer [he or she] is in attendance.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3306



SUBCHAPTER C. EXAMINATIONS

16 TAC §112.21, §112.22

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory

authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.21. *Examination Qualifications.*

§112.22. *Examination Tests and Contents.*

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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16 TAC §§112.21 - 112.26

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.21. *Examination Contents and Test Administration.*

(a) The examination required under the Act shall consist of a written test, a practical test, and a jurisprudence test.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written test is the International Licensing Examination for Hearing Instrument Dispenser, administered by the department's designee.

(2) The practical test is developed by the department and administered by the department's designee.

(3) The jurisprudence test is developed by the department and administered by the department's designee.

(c) The examination under subsection (a), will test the following areas as they relate to the fitting and dispensing of hearing instruments:

- (1) basic physics of sound;
- (2) structure and function of hearing instruments;
- (3) fitting of hearing instruments;
- (4) pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) live voice and recorded voice speech audiometry;
- (6) masking when indicated for air conduction, bone conduction, and speech;
- (7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;
- (8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;
- (9) taking of earmold impressions;
- (10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;
- (11) anatomy and physiology of the ear;
- (12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;
- (13) use of an otoscope for the visual observation of the entire ear canal; and
- (14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

§112.22. Examination Qualification Process.

(a) An applicant must qualify to take the written test and the practical test. The applicant must also take the jurisprudence test as described under §112.26, but the applicant does not need to qualify to take the jurisprudence test.

(b) The department will review a temporary training permit holder's documentation as prescribed under §112.53 to determine whether the applicant qualifies to take the written and practical tests.

(c) The department will review an out of state license holder's application and other submitted documentation as prescribed under §112.33 to determine whether the applicant qualifies to take the practical test.

(d) The department or department's designee will notify the applicant who qualifies to take the examination.

§112.23. Examination and Test [Scores and] Results.

(a) The applicant must pass [each part of] the required examination consisting of the [(written, practical, and jurisprudence tests)] with a score of 70 percent or greater.

(b) The department or the department's designee will notify the applicant in writing regarding the applicant's test [examination scores of] results for the written and practical tests [examinations].

(c) The department's designee will provide a certificate of completion to the applicant upon passage of the jurisprudence test [examination].

§112.24. Failure of Examination or Test.

(a) An applicant who failed an examination or test may retake the examination or test.

(b) An applicant who failed a practical test may be retested only on those portions of the practical test that the applicant failed.

(c) An applicant must pay a new fee to retake the examination or test.

(d) An applicant must hold a current temporary training permit or an out-of-state license under §112.33 in order to retake the examination or test. [An applicant who fails the examination may retake the failed portion or portions of the examination after payment of an additional examination fee. An applicant must hold a current temporary training permit or an out-of-state license under §112.33 in order to retake the failed portion or portions of the examination.]

§112.25. Practical Test [Examination] Proctors.

(a) The practical test [examination] must be administered by one or more qualified proctors selected and assigned by the department.

(b) Qualifications for test [Examination] Proctor.

(1) (No change.)

(2) A proctor must have held the license for at least two years prior to the practical test [examination] date.

(3) A proctor must have observed at least three full practical tests [examinations] and meet any other proctor training requirements as prescribed by the department [Department] or its designee prior to serving as a proctor.

(4) Disciplinary actions or other actions that may disqualify a license holder from serving as a proctor are:

(A) - (B) (No change.)

(C) an administrative penalty or reprimand under this chapter within three years prior to the test [examination] date.

§112.26. Jurisprudence Test [Examination].

(a) To fulfill the requirements under Texas Occupations Code §402.204(b)(14), an applicant must complete [pass] the jurisprudence test [examination] prescribed by the department.

(b) The jurisprudence test [examination] is separate from the written and practical tests [examinations under §112.22]. The jurisprudence test covers [examination tests the applicant's knowledge of] the laws, rules, and regulations of Texas and of the United States relating to the fitting and dispensing of hearing instruments.

(c) The applicant must register online and pay the jurisprudence test [examination] fee to the department's designee [third-party provider]. The applicant does not need to qualify through the department to take the jurisprudence test [examination].

(d) The applicant must successfully complete the jurisprudence test [Jurisprudence Examination] and submit a certificate of completion prior to receiving a hearing instrument fitter and dispenser license or an apprentice permit.

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

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SUBCHAPTER D. HEARING INSTRUMENT
FITTER AND DISPENSER LICENSE

16 TAC §§112.30, 112.32, 112.33

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.30. Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements.

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

(d) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety or its designee, in a manner prescribed by the Department of Public Safety, for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(e) Surety Bond or Other Acceptable Form of Financial Security.

(1) The applicant's employer, who is subject to §112.60, must provide the applicant with a surety bond or other acceptable form of financial security. The applicant must submit the surety bond or other financial security to the department with the license application.

(2) As an alternative to subsection (e)(1), the applicant's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of itself and the applicant. The employer must submit the prescribed form that identifies the applicant who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of issuance of the applicant's license.

(f) [(e)] The commission or executive director may deny an application based on the grounds for denial under Texas Occupations Code §402.501.

(g) The commission or department shall deny an application pursuant to Texas Occupations Code §108.052.

§112.32. Hearing Instrument Fitter and Dispenser License--License Term; Renewals.

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

(d) A license holder [licensee] must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the license holder if the person needs[; however, the licensee does not need] to submit new fingerprints.

(e) Surety Bond or Other Acceptable Form of Financial Security.

(1) For the first renewal on or after September 1, 2020, the license holder's employer, who is subject to §112.60, must provide the license holder with a surety bond or other acceptable form of financial security. The license holder must submit the surety bond or other financial security to the department with the license renewal application.

(2) As an alternative to subsection (e)(1), for the first renewal on or after September 1, 2020, the license holder's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of the employer and the license holder. The employer must submit the prescribed form that identifies the license holder who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of renewal of the license holder's license.

(f) For each license renewal on or after September 1, 2020, the license holder must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(g) The commission or department shall renew the license of a license holder who has met all the requirements for renewal, except as provided under Texas Occupations Code §402.301 and §402.501.

[(e) The commission or department may deny the renewal of the license pursuant to Texas Occupations Code §402.501.]

[(f) Except as provided under subsection (e), a license that is not revoked or suspended shall be renewed provided that all other requirements are met.]

(h) [(g)] A person whose license has expired may renew the license in accordance with §60.31 and §60.83 of this title.

(i) [(h)] A person whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(j) [(i)] The department shall issue a renewal card to a license holder who has met all the requirements for renewal. The license holder must display the renewal card in association with the license.

§112.33. Application by License Holder From Another State.

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

(d) An applicant must submit the following required documentation:

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

(3) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed

include passing the International Licensing Examination for Hearing Instrument Dispenser (ILE) written test [~~examination~~]; or

(B) (No change.)

(4) - (6) (No change.)

(e) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety or its designee, in a manner prescribed by the Department of Public Safety, for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(f) (No change.)

(g) The commission or department shall deny an application pursuant to Texas Occupations Code §108.052.

(h) Surety Bond or Other Acceptable Form of Financial Security.

(1) The applicant's employer, who is subject to §112.60, must provide the applicant with a surety bond or other acceptable form of financial security. The applicant must submit the surety bond or other financial security to the department with the license application.

(2) As an alternative to subsection (h)(1), the applicant's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of the employer and the applicant. The employer must include the prescribed form that identifies the applicant who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of issuance of the applicant's license.

(i) [~~(g)~~] If the department approves an application, the applicant must take the practical test [~~examination~~] and the jurisprudence test [~~examination required under §112.22 and §112.26~~]. If the applicant meets the examination requirements [~~passes the examinations required under this section~~], the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(j) [~~(h)~~] The department may allow an applicant under this section who satisfies all application requirements other than the requirement under subsection (d)(3), to take all three tests that comprise [~~sections of~~] the examination required under Texas Occupations Code §402.202. If the applicant meets [~~passes~~] the examination requirements, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(k) [~~(i)~~] The department may not issue a license under this section to an applicant who is a licensed audiologist in another state. The department shall inform the applicant of the licensing requirements of Chapter 401.

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-202000528

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3306

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SUBCHAPTER E. APPRENTICE PERMIT

16 TAC §112.40, §112.42

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.40. *Apprentice Permit--Application and Eligibility Requirements.*

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

(c) An applicant for an apprentice permit must:

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

(4) pass the written and practical tests [~~all parts of the examination required under §112.22~~];

(5) submit a certificate of completion of the jurisprudence test [~~examination under §112.26~~]; and

(6) (No change.)

(d) An applicant for an apprentice permit must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

§112.42. *Apprentice Permit--Permit Term; Extension.*

(a) (No change.)

(b) To extend an apprentice permit, the apprentice permit holder must:

(1) submit an extension request on a department-approved form not later than 90 days after the expiration of the permit;

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

(c) An apprentice permit holder must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines to extend the permit.

(d) (No change.)

(e) A person whose apprentice permit has expired has 90 days after the expiration date to request an extension from the department.

After that date, the person must apply for a temporary training permit and must start over at the beginning of the temporary training permit process. The person must repeat and complete the temporary training permit requirements and the apprentice permit requirements under Occupations Code Chapter 402 and this chapter.

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 F. TEMPORARY TRAINING PERMIT

16 TAC §112.52, §112.53

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.52. *Temporary Training Permit--Permit Term; Extension.*

(a) (No change.)

(b) To extend a temporary training permit, the temporary training permit holder must:

(1) submit an extension request on a department-approved form no later than 90 days after the expiration of the permit;

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

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

(e) A person whose permit has expired has 90 days after the expiration date to request an extension from the department. After that date, the person must apply for a new permit and must start over at the beginning of the temporary training permit process as prescribed under §112.50(e). This new permit will count as the person's second permit under §112.50(e).

(f) [(e)] A person who has been issued a second temporary training permit under §112.50 may extend the second temporary training permit once in accordance with this section.

§112.53. *Temporary Training Permit--Supervision and Temporary Training Requirements.*

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

(c) A person must obtain a temporary training permit prior to beginning the supervision and must maintain a valid temporary training permit during the person's [his or her] supervised practicum experience.

(d) - (l) (No change.)

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

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SUBCHAPTER G. FINANCIAL SECURITY REQUIREMENTS

16 TAC §112.60, §112.61

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.60. *Filing Surety Bond or Other Form of Financial Security.*

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments must file with the department financial security in a form provided by subsection (c) [(b)], in the amount of \$10,000 and conditioned on the promise to pay all:

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

(b) The financial security covers the actions, conduct, or liability of the sole proprietor, partnership, corporation, or other legal entity and the license holders employed by that entity as prescribed under Occupations Code §402.405 and §112.61.

(c) [(b)] A sole proprietor, partnership, corporation, or other legal entity must file with the department one of the following acceptable forms of financial security in the amount required in subsection (a):

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

(d) A sole proprietor, partnership, corporation, or other legal entity must file the financial security with the department at the following times and in the manner prescribed in the following sections:

(1) for an employee's initial license application as prescribed under §112.30 or §112.33;

(2) for an employee's first license renewal on or after September 1, 2020, as prescribed under §112.32; and

(3) for a new employee who provides notice of change in employment as prescribed under §112.91.

(c) [(e)] The [surety bond or other accepted form of] financial security must be received on or before the date of issuance of the employee's license.

(f) [(d)] A person to whom the Act does not apply pursuant to Texas Occupations Code §402.003 is not required to file financial security [a bond] under this section.

(g) [(e)] Financial security required under this section remains in effect until canceled by action of the surety, the principal, or the department. Notice of cancellation must be provided to the department no later than thirty (30) days prior to cancellation.

§112.61. *Recovery on Surety Bond or Other Form of Financial Security.*

(a) The purchaser of a hearing instrument may rescind the purchase and recover funds as provided by Texas Occupations Code §402.404 and §112.60 for: [§402.405-]

(1) a material misstatement of fact or misrepresentation by a license holder employed by an entity regarding the instrument or services to be provided by the license holder that was relied on by the purchaser or that induced the purchaser to purchase the instrument;

(2) the failure by the entity to provide the purchaser with an instrument or with fitting and dispensing services that conform to the specifications of the purchase agreement;

(3) the diagnosis of a medical condition unknown to the purchaser at the time of the purchase that precludes the purchaser's use of the instrument;

(4) the failure by the entity to remedy a significant material defect of the instrument within a reasonable time;

(5) the provision by the entity of fitting and dispensing services that are not in accordance with accepted industry practices; or

(6) the failure by a license holder employed by the entity to meet the standards of conduct prescribed by Occupations Code Chapter 402 or this chapter that adversely affects the transactions between the purchaser and the license holder or the entity.

(b) (No change.)

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

16 TAC §112.71

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.71. *Continuing Education--Records and Audits.*

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of the license holder's [his or her] continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) (No change.)

(c) The license holder shall be responsible for maintaining a record of the license holder's [his or her] continuing education experiences until the next renewal is completed.

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 J. RESPONSIBILITIES OF THE LICENSEE

16 TAC §112.91, §112.98

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.91. *Change of Name, Address, or Other Information.*

(a) A license holder or permit holder [~~licensee~~] must notify the department in writing within thirty (30) days of any changes of name, address, telephone number, or employment.

(b) If a license holder changes employment, the financial security on file with the department must be updated within thirty (30) days of the license holder's change in employment. The updated financial security may be filed as follows:

(1) The license holder's new employer, who is subject to §112.60, must provide the license holder with a surety bond or other acceptable form of financial security. The license holder must submit the surety bond or other financial security to the department with the change in employment notice.

(2) As an alternative to subsection (b)(1), the license holder's new employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of itself and the license holder. The new employer must submit the prescribed form that identifies the license holder who is covered under the surety bond or other financial security.

§112.98. *Code of Ethics.*

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

(c) A license holder or permit holder shall:

(1) offer only those services that are within the person's [~~his~~ or ~~her~~] professional competency;

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

(d) A license holder or permit holder shall not:

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

(3) misrepresent the person's [~~his~~ or ~~her~~] professional credentials or [~~and/or~~] qualifications;

(4) - (6) (No change.)

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 463-3306

◆ ◆ ◆
SUBCHAPTER L. FEES

16 TAC §112.110

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rule.

§112.110. *Fees.*

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

(e) The fees for the written test [~~examination~~], the practical test [~~examination~~], and the jurisprudence test [~~examination~~] are set by and payable to the department's ~~designees~~ [~~designee~~].

(f) - (j) (No change.)

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

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SUBCHAPTER M. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§112.120 - 112.125

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.120. Complaints [Regarding Standard of Care].

(a) The commission has adopted rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031. These rules are located at 16 Texas Administrative Code Chapter 100.

(b) A qualified person may assist the department in the review and investigation of complaints and will be immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(c) The provisions regarding the confidentiality of complaint and disciplinary information are provided under Texas Occupations Code §51.254.

§112.121. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 402, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 402, as applicable, and any associated rules.

§112.122. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 402 and any associated rules may be used to enforce Texas Occupations Code, Chapter 402 and this chapter.

§112.123. Refund for Hearing Instrument.

The commission or executive director may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period described in the Act and in this chapter.

§112.124. Surrender of a License or Permit.

(a) Surrender by license holder or permit holder.

(1) A license holder or permit holder may at any time voluntarily offer to surrender the person's license or permit for any reason.

(2) If no complaint is pending, the executive director shall accept and void the surrendered license or permit immediately.

(b) Formal disciplinary action.

(1) When a license holder or permit holder has offered the surrender of the person's license or permit after a complaint has been filed, the executive director shall accept and void the surrendered license or permit immediately.

(2) When the executive director has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and an order accepting the surrender may be prepared.

(c) Reinstatement. A license or permit which has been surrendered may not be reinstated; however, a person may apply for a new license or permit in accordance with the Act and this chapter.

(d) This section does not apply to a license or permit that is subject to §112.125.

§112.125. Automatic Denials and Revocations.

(a) The department shall deny an application for a license or permit, and shall revoke a license or permit issued under Chapter 402, under the circumstances set forth in Texas Occupations Code, Chapter 108, Subchapter B.

(b) A person whose application for a license or permit has been denied, or whose license or permit has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B, may reapply or seek reinstatement as provided by that subchapter.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §§112.130 - 112.132, 112.134

The repeals are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§112.130. Administrative Penalties and Sanctions.

§112.131. Enforcement Authority.

§112.132. Refund for Hearing Instrument.

§112.134. Surrender of a License or Permit.

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

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CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §114.40

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 114, §114.40, regarding the Orthotists and Prosthetists Program. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 114, implement Texas Occupations Code, Chapter 605.

The proposed rule is necessary to implement the requirements of House Bill (HB) 2059 of the 86th Texas Legislature, Regular Session (2019), and Texas Occupations Code Chapter 116, requiring human trafficking prevention training for health care practitioners prior to the renewal of a license. The proposed rule also amends the rule section's definition of "licensee" to reflect the definition used throughout Chapter 114 for purposes of clarity and consistency.

The proposed rule was presented to and discussed by the Orthotists and Prosthetists Advisory Board at its meeting on January 13, 2020. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §114.40, Renewal, by clarifying the rule section's definition of "licensee" in subsection (a) to reflect the definition used throughout Chapter 114. Additionally, the proposed rule amends the section to include new subsection (c)(7), a requirement for human trafficking prevention training prior to license renewal as required by HB 2059 and Texas Occupations Code §116.003.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be increasing awareness and assisting prevention of human trafficking in Texas.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The requirements of HB 2059 stipulate that at least one human trafficking prevention course will be free, and thus persons subject to the rule will not be required to pay additional costs for training.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does create a new regulation. The proposed rule implements a new requirement created by HB 2059 for orthotists and prosthetists and certain other healthcare practitioners to complete a human trafficking prevention training course as a condition of license renewal on or after September 1, 2020.
6. The proposed rule does not expand, limit, or repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 605, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51, 116, and 605. No other statutes, articles, or codes are affected by the proposed rule.

§114.40. *Renewal.*

(a) Application. Unless the text clearly says otherwise, use of the term licensee shall have the meaning assigned in §114.10 [~~include both licensees and registrants, and use of the term license shall include both licenses and registrations~~].

(1) - (3) (No Change.)

(b) (No Change.)

(c) License renewal requirements. To renew a license, a licensee must:

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

(5) comply with the continuing education audit process described under §114.50, as applicable; [~~and~~]

(6) submit the renewal fee required under §114.80; and [-]

(7) for each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(d) - (f) (No change.)

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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CHAPTER 115. MIDWIVES

16 TAC §115.14, §115.70

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §115.14 and §115.70, regarding the Midwives Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 115, implement Texas Occupations Code, Chapter 203, Midwives. The proposed rules are necessary to implement House Bill (HB) 2059 and Senate Bill (SB) 1531, 86th Legislature, Regular Session (2019). These two categories of rule changes have been combined into one proposal to eliminate the need for separate rulemakings.

HB 2059 amends the Occupations Code by adding new Chapter 116, Training Course on Human Trafficking Prevention, which requires certain health care practitioners, including midwives, to successfully complete a training course approved by the Executive Commissioner of the Health and Human Services Commission (HHSC) on identifying and assisting victims of human trafficking as a condition for renewal of a license on or after September 1, 2020. The proposed rules add proof of completion of such a training course to the list of items required for renewal of a midwife license on or after September 1, 2020.

SB 1531 amends Occupations Code, Chapter 203, by removing conviction of a misdemeanor of moral turpitude or a felony from the list of items that authorize the Texas Commission of Licensing and Regulation (Commission) or the executive director of the Department to discipline a midwife or deny an application for a midwife license or its renewal. The proposed rules remove the corresponding language from the rule text to maintain consistency with the statutory language.

The proposed rules were presented to and discussed by the Midwives Advisory Board at its meeting on January 30, 2020. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §115.14, License Renewal, by adding new subsection (b) to include proof of completion of the human trafficking prevention training required by Occupations Code, Chapter 116, in the list of items that must be submitted to the Department for renewal of a midwife license on or after September 1, 2020.

The proposed rules amend §115.70, Standards of Conduct, by removing "conviction of a felony or a misdemeanor involving moral turpitude" from subparagraph (1)(C) and re-labeling the remaining subparagraphs appropriately.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit regarding the required human trafficking prevention training course will be the increased education and awareness of licensees on how to identify the signs of human trafficking.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit regarding the removal of the reference to "conviction of a felony or a misdemeanor involving moral turpitude" will be providing applicants and licensees with increased certainty in identifying the standards under which license applications may be denied or licensees may be disciplined. Instead of relying on a subjective standard such as "moral turpitude," the Commission or executive director of the Department will apply the standards of statutorily-required criminal conviction guidelines, which clearly denote categories of crimes that are related to the occupation of midwifery.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules implement a new requirement created by HB 2059 for licensed midwives and certain other healthcare practitioners to complete a human trafficking prevention training course as a condition of license renewal on or after September 1, 2020.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal the authority of the Commission and the executive director of the Department to deny an application for initial licensure or license renewal or to take disciplinary action against any person based upon proof of a conviction of a felony or a misdemeanor involving moral turpitude.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 203, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 203. No other statutes, articles, or codes are affected by the proposed rules.

§115.14. *License Renewal.*

(a) In order to renew every two years, a midwife's application for license renewal must include the following:

(1) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the department;

(2) proof of completion of at least 20 contact hours of approved midwifery education since March 1 of the previous two-year renewal period;

(3) proof of a current CPR certification for health care providers from one of the following:

(A) the American Heart Association;

(B) equivalent certification for the professional rescuer from the Red Cross;

(C) equivalent certification for healthcare and professional rescuer from the National Safety Council; or

(D) equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) a nonrefundable renewal fee; and

(6) proof of passing the jurisprudence examination approved by the department in the four years preceding renewal.

(b) For each license renewal on or after September 1, 2020, the licensed midwife must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

§115.70. *Standards of Conduct.*

The following are grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The commission or executive director may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the department;

~~{(C) conviction of a felony or a misdemeanor involving moral turpitude;}~~

(C) ~~{(D)}~~ intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(D) ~~{(E)}~~ unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(E) ~~{(F)}~~ inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(F) ~~{(G)}~~ judgment by a court of competent jurisdiction that the individual is mentally impaired;

(G) ~~{(H)}~~ disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

~~{(H)}~~ ~~{(I)}~~ submission of a birth or death certificate known by the individual to be false or fraudulent, or other non-compliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

~~{(I)}~~ ~~{(J)}~~ noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

~~{(J)}~~ ~~{(K)}~~ failure to practice midwifery in a manner consistent with the public health and safety;

~~{(K)}~~ ~~{(L)}~~ failure to submit midwifery records in connection with the investigation of a complaint;

~~{(L)}~~ ~~{(M)}~~ a lack of personal or professional character in the practice of midwifery;

~~{(M)}~~ ~~{(N)}~~ failure to use generally accepted standards of midwifery care;

~~{(N)}~~ ~~{(O)}~~ failure to exercise ordinary diligence in the provision of midwifery care;

~~{(O)}~~ ~~{(P)}~~ failure to act competently in the provision of midwifery care; or

~~{(P)}~~ ~~{(Q)}~~ a material misrepresentation knowingly made to the department on any matter or to a client during the provision of midwifery care.

(2) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(3) The commission or executive director may revoke course approval if:

(A) the course no longer meets one or more of the standards established by this subsection;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the qualifications required by this subsection;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor falsified course registration, attendance, completion and/or other records; or

(E) continued approval of the course is not in the public interest.

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

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Brad Bowman

General Counsel

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CHAPTER 116. DIETITIANS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 116, Subchapter A, §116.2;

Subchapter C, §116.20; Subchapter E, §116.40 and §116.42; Subchapter F, §§116.50, 116.51, and 116.53; Subchapter I, §§116.80 - 116.82; Subchapter K, §§116.100, 116.101, 116.104, and 116.105; Subchapter M, §116.120; and Subchapter O, §116.141 and §116.142; proposes the repeal of existing rules at Subchapter C, §116.21; Subchapter D, §116.30; Subchapter J, §116.90; and Subchapter N, §§116.130 - 116.132; and proposes new rules at Subchapter C, §116.22; and Subchapter M, §§116.121 - 116.123, regarding the Dietitians program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 116, implement Texas Occupations Code, Chapter 701, Dietitians. The proposed rules are necessary to implement three categories of changes: bill implementation changes, Licensing Workgroup changes, and terminology and other clean-up changes.

Bill Implementation Changes

The proposed rules implement House Bill (HB) 2847 and HB 2059, 86th Legislature, Regular Session, 2019. HB 2847 was an omnibus bill that affected multiple programs. Article 12 of the bill made clean-up changes to the Dietitians statute. Article 7 of the bill applied to multiple programs, including Dietitians. The proposed rules implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Dietitians are affected by this bill. The proposed rules implement HB 2059 by requiring dietitians to take the training course for each license renewal on or after September 1, 2020.

Licensing Workgroup Changes

The proposed rules also implement the changes recommended by the Dietitians Advisory Board Licensing Workgroup and Department staff. These changes: streamline the license application process requirements; consolidate the education and experience requirements into one subchapter; update the experience requirements; remove the jurisprudence exam requirement at renewal; revise and clean up the continuing education requirements; update the license fitness requirements; remove the license registry information; and update the advertising rule requirements.

Terminology and Other Clean-up Changes.

Finally, the proposed rules make terminology and other clean-up changes. These changes: replace existing language with gender neutral language and "person first respectful language"; remove unnecessary provisions; clean-up terminology and statutory cross-references; and consolidate the complaint and enforcement provisions into one subchapter.

The proposed rules were presented to and discussed by the Dietitians Advisory Board at its meeting on January 16, 2020. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend Subchapter A. General Provisions.

The proposed rules amend §116.2, Definitions. The proposed rules add a definition for "Accreditation Council for Education in Nutrition and Dietetics (ACEND)," remove the definition of "CPE" (continuing professional experience), and renumber the definitions accordingly. (Licensing Workgroup Changes)

The proposed rules amend Subchapter C. Education Requirements.

The proposed rules amend the title of Subchapter C to read "Education and Experience Requirements." The proposed rules combine Subchapters C and D into one subchapter. The experience requirements under Subchapter D are being relocated to Subchapter C. (Licensing Workgroup Changes)

The proposed rules amend the title of §116.20 to "Education Requirements" "Degrees and Course Work." With the addition of the experience requirements to this subchapter, the proposed rules clarify that §116.20 contains the education requirements.

The proposed rules also amend §116.20 to streamline the license application process and restructure and clarify the existing provisions.

The proposed rules amend subsections (c) and (d) regarding "an equivalent major course of study approved by the Department" as prescribed under Texas Occupations Code §701.254(1)(B). The Department has determined that a major course of study that is acceptable to the Commission on Dietetic Registration (CDR) to qualify to take the CDR examination is "an equivalent major course of study approved by the Department" and is acceptable to the Department for licensure. The proposed rules amend subsection (c) to clearly state the statutory requirements under §701.254(1) and amend subsection (d) to remove the option that details specific course work and semester hours. The proposed rules eliminate the need for the applicant to send the applicant's transcripts to the Department.

The proposed rules add new subsection (e) that requires the applicant to provide an active CDR registration number at the time of license application to show proof of meeting the education requirements under this section. This change will streamline the license application process. New subsection (e) aligns with the requirements under §§116.22(c), 116.42(e), and 116.50(b).

The proposed rules delete former subsections (e), (f), and (g), since these provisions are no longer necessary. (Licensing Workgroup Changes)

The proposed rules repeal §116.21, Transcripts. The proposed rules streamline the license application process by eliminating the submission of transcripts to the Department. CDR has already reviewed the applicant's transcripts to determine eligibility to take the CDR examination. Transcripts, degrees, and coursework that are acceptable to CDR for qualifying to take the CDR exam are acceptable to the Department for licensure. The applicant only needs to provide the active CDR registration number to the Department. (Licensing Workgroup Changes)

The proposed rules add new §116.22, Experience Requirements--Internships and Professional Experience Programs. This new section was former §116.30. It has been relocated from Subchapter D, Experience Requirements. (Licensing Workgroup Changes)

The proposed rules under subsection (a) restate the statutory requirements under Texas Occupations Code §701.254(2). The proposed rules under subsection (b) update the current rule requirements regarding internships in dietetics practice and pre-

planned, documented, professional experience programs in dietetics practice. The new proposed rules reflect the possible experience options that are still within the authority and scope of the Dietitians statute.

The proposed rules under subsection (c) have been updated to require the applicant to provide an active CDR registration number, instead of a copy of the CDR registration card, at the time of license application to show proof of meeting the experience requirements under this section. This change will streamline the license application process. New subsection (c) aligns with the requirements under §§116.20(e), 116.42(e), and 116.50(b). (Licensing Workgroup Changes)

The proposed rules repeal Subchapter D. Experience Requirements.

Subchapter D is being eliminated, and the education and experience requirements are being combined under Subchapter C. (Licensing Workgroup Changes)

The proposed rules repeal §116.30, Preplanned Professional Experience Programs and Internships, and relocate the experience requirements to Subchapter C with the education requirements. The provisions under this section are located under new §116.22. (Licensing Workgroup Changes)

The proposed rules amend Subchapter E. Examination Requirements.

The proposed rules amend §116.40, License Examination Requirements--General. The proposed rules streamline and clarify the license examination requirements. The proposed rules remove subsection (c), which is unnecessary in the rules since the Department-required examination is the CDR examination. (Licensing Workgroup Changes)

The proposed rules amend §116.42, License Examination Process. The proposed rules streamline and clarify the license examination requirement. The proposed rules require the applicant to submit the CDR registration number as proof of passing the examination. No other documentation must be provided to the Department. The proposed new subsection (e) aligns with the requirements under §§116.20(e), 116.22(c), and 116.50(b). (Licensing Workgroup Changes)

The proposed rules amend Subchapter F. Licensed Dietitians.

The proposed rules amend §116.50, Licensed Dietitians--Application and Eligibility Requirements. The proposed rules streamline and clarify the license application requirements. Under subsection (b), the applicant no longer has to submit transcripts or a copy of the active CDR registration card. The applicant only needs to provide the active CDR registration number to the Department to show proof of meeting the education, experience, and examination requirements. Under subsection (c), clarifying language has been added regarding the criminal history background checks. (Licensing Workgroup Changes) In addition, the proposed rules delete subsection (e) to implement HB 2847, Article 12, which repealed §701.151(b)(4). (Bill Implementation Changes)

The proposed rules amend §116.51, Licensed Dietitians--Fitness of Applicants for Licensure. The proposed rules update the cross-reference in subsection (a) to implement HB 2847, Article 12. (Bill Implementation Changes) In addition, the proposed rules update the fitness requirements that are prescribed by statute. The proposed rules eliminate unnecessary requirements and include disciplinary actions taken by CDR.

The proposed rules also make clean-up changes. (Licensing Workgroup Changes)

The proposed rules amend §116.53, Licensed Dietitians--License Term; Renewals. The proposed rules under subsection (c) remove the requirement to submit proof of completing the jurisprudence exam for a license renewal. The proposed rules also relocate the criminal history and fitness provisions from subsection (c) to mirror the initial application structure. The proposed rules under subsection (d) add clarifying language regarding the criminal history background checks. (Licensing Workgroup Changes)

In addition, the proposed rules under §116.53 implement HB 2059 and HB 2847, Article 12. New subsection (f) is added to implement HB 2059 regarding the required human trafficking prevention training. Current subsection (e) has been eliminated to implement HB 2847, Article 12, by removing the reference to §701.151. While §701.151(b)(4) was repealed by HB 2847, §701.401 still exists. Section 701.401 includes a mandatory refusal to renew provision. (Bill Implementation Changes)

Finally, the proposed rules under §116.53 consolidate current subsections (d), (e), and (f) into one subsection that is re-lettered as subsection (g). The text of current subsections (e) and (f) has been removed and replaced with cross-references to the statutory provisions. The cross-reference to §701.151 has been replaced with the cross-reference to §701.401. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter I. Continuing Education.

The proposed rules amend §116.80, Continuing Education--General Requirements and Hours. The proposed rules remove an unnecessary provision under subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The proposed rules remove subsection (c) since §116.81(c) and §116.83(b) address continuing education hours completed before and after the license term. (Licensing Workgroup Changes)

The proposed rules amend §116.81, Continuing Education--Approved Courses and Credits. The proposed rules under subsection (c) make clean-up changes. The proposed rules under subsection (d) allow the jurisprudence exam to be taken as part of continuing education hours, but the jurisprudence exam is no longer required for renewal. The proposed rules under subsection (d) grant one hour of continuing education credit for taking the jurisprudence exam. The proposed rules under subsection (e) eliminate the requirement to take the jurisprudence exam at renewal. (Licensing Workgroup Changes)

The proposed rules amend §116.82, Continuing Education--Records and Audits. The proposed rules update the terminology in subsection (a) to use gender neutral language. The proposed rules update the references in subsections (a) and (b) from "license holder" to "licensee" for consistency purposes throughout this section and the chapter. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter J. Responsibilities of the Commission and the Department.

The proposed rules repeal §116.90, Registry. The proposed rules repeal the registry rule due to changes in the licensee information that is posted on the Department website. The registry is required by statute under Texas Occupations Code §701.1511. The registry is still available, but a rule is not necessary. The proposed rules eliminate provisions referencing specific information

that will be included in the registry or posted on the Department website. (Licensing Workgroup Changes)

The proposed rules amend Subchapter K. Responsibilities of the Licensee and Code of Ethics.

The proposed rules amend §116.100, Display of License. The proposed rules remove an unnecessary provision under subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The remaining subsections are re-lettered. (Terminology and Other Clean-up Changes)

The proposed rules amend §116.101, Changes of Name or Address. The proposed rules remove an unnecessary provision under subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The remaining subsections are re-lettered. Re-lettered subsection (b) has been separated into two subsections. Re-lettered subsection (b) addresses name changes and updates the language regarding the submission of changes. New subsection (c) addresses obtaining a duplicate license. (Terminology and Other Clean-up Changes)

The proposed rules amend §116.104, Unlawful, False, Misleading, or Deceptive Advertising. The proposed rules update the terminology under subsection (a) to use gender neutral language. (Terminology and Other Clean-up Changes) In addition, the proposed rules remove the blanket prohibition on testimonials under subsection (b) in accordance with Texas Attorney General Opinion JC-0458 (February 8, 2002). The remaining provisions are renumbered. (Licensing Workgroup Changes)

The proposed rules amend §116.105, Code of Ethics. The proposed rules update the terminology in subsections (a) and (b) to use gender neutral language and to use "person first respectful terminology." The proposed rules also update the cross-references to other statutes in subsections (a) and (e). (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter M. Complaints.

The proposed rules amend the title of Subchapter M to read "Complaints and Enforcement Provisions." The proposed rules combine Subchapters M and N into one subchapter. The enforcement sections under Subchapter N are being relocated to Subchapter M. (Terminology and Other Clean-up Changes)

The proposed rules amend the title of §116.120 to read "Complaints." This change reflects the expanded scope of the section.

The proposed rules under §116.120 also add new subsection (b) as a notice to licensed dietitians and to the public regarding qualified persons, including licensees and advisory board members, assisting the Department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

In addition, the proposed rules under §116.120 add new subsection (c) as a notice to licensed dietitians and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §701.2041 addressed these issues for dietitians. HB 2847, Article 7, §7.008, repealed §701.2041 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including dietitians. (HB 2847, §7.004). (Bill Implementation Changes)

The proposed rules add new §116.121, Administrative Penalties and Sanctions. This new section was former §116.130. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §116.122, Enforcement Authority. This new section was former §116.131. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules add new §116.123, License Surrender. This new section was former §116.132. There are no proposed changes to the text. (Terminology and Other Clean-up Changes)

The proposed rules repeal Subchapter N. Enforcement Provisions.

Subchapter N is being eliminated, and the complaints and enforcement provisions are being combined under Subchapter M. (Terminology and Other Clean-up Changes)

The proposed rules repeal §116.130, Administrative Penalties and Sanctions. This section has been relocated to new §116.121. (Terminology and Other Clean-up Changes)

The proposed rules repeal §116.131, Enforcement Authority. This section has been relocated to new §116.122. (Terminology and Other Clean-up Changes)

The proposed rules repeal §116.132, License Surrender. This section has been relocated to new §116.123. (Terminology and Other Clean-up Changes)

The proposed rules amend Subchapter O. The Dietetic Profession.

The proposed rules amend §116.141, Provider of Nutrition Services. The proposed rules update the terminology in subsections (b) and (c) to use gender neutral language. (Terminology and Other Clean-up Changes.)

The proposed rules amend §116.142, Licensed Dietitians Providing Diabetes Self-Management Training. The proposed rules update the terminology in subsection (c) to use gender neutral language. (Terminology and Other Clean-up Changes.)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to the state government as a result of enforcing or administering the proposed rules. It is estimated that the costs to administer or enforce the proposed rule changes to be minimal, if any, to the State. The activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising forms, publications, and website information. By streamlining the application process, it is anticipated that there may be a minimal reduction in workload resulting from the reduced number of deficient applications received. However, the number of deficient applications in any year is not large and any reduction in workload would be de minimis. The overall cost to regulate the Dietitians program would not change.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to local government as a result of enforcing or administering the proposed rules. Local government does not regulate licensure of dietitians.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state government as a result of enforcing or administering the proposed rules. No new fees or increased fees have been proposed. HB 2059 sets out the requirement for licensees to complete the human trafficking prevention training and requires the Health and Human Services Commission (HHSC) to provide at least one free human trafficking prevention training option. If a licensee chooses to pay a fee for the required training, the cost is discretionary and the fee would be paid to the training provider, not to the Department. In addition, no fees have been removed by the proposed rules. Removing the requirement for licensed dietitians to complete the jurisprudence exam at each renewal will not impact the State's revenue because the exam is administered by a third-party vendor. Fees are collected by the third-party vendor, not by the Department.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rules. Fees associated with the program are remitted to the state and not to local governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the implementation of legislative changes for more effective regulation of the Dietitians program. In implementing HB 2847, individuals who assist the agency with complaints and investigations will be immune from liability, which may increase availability of subject matter experts and could lead to a faster resolution of complaints and investigations. In implementing HB 2059, the HHSC-approved human trafficking prevention training courses will educate and bring awareness to licensees on how to identify the signs of human trafficking, which is a benefit to the public.

There will also be a benefit to license applicants for each year of the first five-year period the proposed rules are in effect. The proposed rules streamline the license application process, which expedites issuing licenses and allows new licensees to begin employment sooner.

In addition, Mr. Couvillon has determined that there will be a benefit, including a reduction in costs, to current licensees in complying with the proposed rules. Licensees will no longer be required to complete the jurisprudence examination at each renewal, for a savings of \$34 per licensee every two years. In addition, licensees will benefit from the removal of the rule prohibiting testimonials in advertising. This change would allow licensed dietitians to enhance their advertising, thereby possibly increasing business and revenue. This change also would provide the pub-

lic with more information about dietetic services and aid in the selection a licensed dietitian.

Finally, the public and the licensees will benefit from the updates to the existing rules, the consolidation of subchapters, and the terminology and other clean-up changes made in the proposed rules. These changes will make the rules current and more user-friendly.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. HB 2059 sets out the requirement for licensees to complete the human trafficking prevention training, and it requires the Health and Human Services Commission (HHSC) to approve these training courses and to provide at least one free training course option. If a licensee chooses to pay a fee for the required training, that cost would be discretionary on the part of the licensee and would not be a result of the Department's proposed rules. Additionally, any cost to attend a human trafficking prevention training course would be established by the training provider and therefore cannot be estimated by the Department. Any costs associated with the human trafficking prevention training are a result of the new statute, Texas Occupations Code, Chapter 116, as added by HB 2059. There are no costs imposed by the Department's proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do create a new regulation. The proposed rules implement HB 2059 and create a new regulation requiring licensed dietitians to complete a HHSC-approved human trafficking prevention training course as a condition of license renewal. This requirement becomes effective September 1, 2020.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal: (a) the requirement for a licensed dietitian to complete a jurisprudence exam at each license renewal; (b) some of the application requirements, such as the requirement to submit a copy of the CDR registration card and official transcripts; (c) the requirement from the rules for the Department to have a registry of license holders available (the requirement is still in the statute); (d) the prohibition against testimonials in advertising; and (e) the option for an equivalent major course of study approved by the Department which does not involve the CDR.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §116.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.2. Definitions.

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

(1) Academy--The Academy of Nutrition and Dietetics, which is the national professional association of dietitians.

~~(2) Accreditation Council for Education in Nutrition and Dietetics (ACEND)--The Academy of Nutrition and Dietetics' accrediting agency for dietetic education programs.~~

~~(3) [(2)] Accredited facilities--Facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.~~

~~(4) [(3)] Act--The Licensed Dietitian Act, Texas Occupations Code, Chapter 701.~~

~~(5) [(4)] Advisory Board--Dietitians Advisory Board.~~

~~(6) [(5)] Certified facilities, agencies, or organizations--Facilities, agencies, or organizations certified by federal agencies.~~

~~(7) [(6)] Commission--The Texas Commission of Licensing and Regulation.~~

~~(8) [(7)] Commission on Dietetic Registration (CDR)--The Commission on Dietetic Registration, the credentialing agency for the Academy of Nutrition and Dietetics, is the agency that evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies. The Commission on Dietetic Registration also approves continuing education activities.~~

~~[(8) CPE--Continuing Professional Experience.]~~

~~(9) Department--The Texas Department of Licensing and Regulation.~~

~~(10) Dietitian--A person licensed under the Act.~~

~~(11) Dietetics--The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition services.~~

~~(12) Executive director--The executive director of the department.~~

~~(13) Licensed dietitian (LD)--A person licensed under the Act.~~

~~(14) Licensed facilities, agencies, or organizations--Facilities, agencies, or organizations licensed by state agencies.~~

~~(15) Licensee--A person who holds a current license as a dietitian issued under the Act.~~

~~(16) Nutrition assessment--The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition. Nutrition assessment is an important component of medical nutrition therapy.~~

~~(17) Nutrition counseling--Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status. Nutrition counseling is an important component of medical nutrition therapy.~~

~~(18) Nutrition services--This term means:~~

~~(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;~~

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutrition care systems; or

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(19) Registered dietitian (RD)--A person who is currently registered as a dietitian by the Commission on Dietetic 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.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000515

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



SUBCHAPTER C. EDUCATION AND EXPERIENCE REQUIREMENTS

16 TAC §116.20, §116.22

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.20. Education Requirements--Degrees and Course Work.

(a) The department shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from United States colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(c) A person [Persons] applying for licensure must possess a baccalaureate or post-baccalaureate degree with:

(1) a major course of study in human nutrition, food and nutrition, nutrition education dietetics, or food systems management; or

(2) an equivalent major course of study approved by the department.

(d) For purposes of meeting the requirement under subsection (c)(2), the department will accept a major course of study that is acceptable to CDR to qualify for the CDR examination. [In place of the requirements in subsection (c), a person may have an equivalent major course of study defined as either:]

[(1) a baccalaureate or post-baccalaureate degree or course work including a minimum of thirty (30) semester hours in the following areas:]

[(A) twelve (12) semester hours must be specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle:]

[(B) six (6) semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management; and]

[(C) twelve (12) semester hours must be from four of the following three-hour courses:]

[(i) upper-division human nutrition related to disease;]

[(ii) upper-division food service systems management;]

[(iii) bio- or physiological chemistry, or advanced normal human nutrition;]

[(iv) food science; or]

[(v) upper-division nutrition education; or]

[(2) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the Commission on Dietetic Registration.]

(e) An applicant must provide an active CDR registration number at the time of license application to show proof of meeting the education requirements under this section. The applicant's degree(s) and coursework that are accepted for registration by the CDR shall be acceptable for licensure by the department.

[(e) The relevance to licensure of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.]

[(f) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the department before the application will be voided and the applicant will be required to reapply and to pay additional application fees.]

[(g) The semester hours may be part of a degree plan or in addition to a degree.]

§116.22. Experience Requirements--Internships and Professional Experience Programs.

(a) An applicant for examination must have satisfactorily completed an approved internship or preplanned, documented, professional experience program in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian.

(b) For purposes of meeting the requirements under subsection (a), the department approves and accepts the following, which are approved or recognized by the CDR or ACEND:

- (1) a dietetic internship;
- (2) a coordinated undergraduate program in dietetics;
- (3) an individualized supervised practice pathway (ISPP) in dietetics; or
- (4) a professional experience program in dietetics.

(c) An applicant must provide an active CDR registration number at the time of license application to show proof of completing the experience requirements under this section. The applicant's internship or professional experience program accepted for registration by the CDR shall be acceptable for licensure by the department.

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

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SUBCHAPTER C. EDUCATION REQUIREMENTS

16 TAC §116.21

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeal.

§116.21. *Transcripts.*

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

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SUBCHAPTER D. EXPERIENCE REQUIREMENTS

16 TAC §116.30

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeal.

§116.30. *Preplanned Professional Experience Programs and Internships.*

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

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SUBCHAPTER E. EXAMINATION REQUIREMENTS

16 TAC §116.40, §116.42

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.40. *License Examination Requirements--General.*

(a) An [Except as provided by subsection (e), an] applicant must pass a license examination to qualify for a dietitian license under this chapter.

(b) Pursuant to Texas Occupations Code §701.253, the examination required for licensure as a Licensed Dietitian is the examination given by the Commission on Dietetic Registration.

~~{(c) The department shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration and whose registration is in active status.}~~

(c) [(d)] An applicant must meet the education and experience requirements under Texas Occupations Code §701.254 to qualify to take the licensing examination.

§116.42. *License Examination Process.*

(a) An applicant who wishes to take the examination is responsible for completing the examination registration form and submitting it with the appropriate fee to the Commission on Dietetic Registration (CDR) or its designee.

(b) Examinations administered by the CDR or its designee will be held in locations to be announced by the CDR or its designee.

(c) Examinations administered by the CDR or its designee shall be graded by the CDR or its designee. The passing grade is determined by the CDR.

(d) The CDR or its designee shall notify the applicant of the examination results. [Applicants must provide documentation showing examination passage to the department.]

(c) An applicant must provide an active CDR registration number at the time of license application to show proof of passing the CDR examination.

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SUBCHAPTER F. LICENSED DIETITIANS

16 TAC §§116.50, 116.51, 116.53

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.50. *Licensed Dietitians--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) To apply for an initial license, an [An] applicant must submit [the following required documentation]:

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

[(2) official transcript(s) of all relevant college work showing successful completion of education requirements under Texas Occupations Code §701.254(1);]

(2) [(3)] [copy of] the applicant's active registration number [card] issued by the Commission on Dietetic Registration as proof that the applicant has met the education, experience, and examination requirements specified in Texas Occupations Code Chapter 701 and in this chapter;[s]

[(A) successfully completed the preplanned professional experience program or internship requirements under Texas Occupations Code §701.254(2) and §116.30; and]

[(B) passed the examination prescribed under Texas Occupations Code §701.253 and §116.40 and §116.42;]

(3) [(4)] the form providing information regarding other state licenses, certificates, or registrations that an applicant holds or held, if applicable;

(4) [(5)] proof of successfully completing the Texas Jurisprudence Examination under Texas Occupations Code §701.2575 and rule §116.44; and

(5) [(6)] the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) The applicant must meet the fitness requirements under §116.51.

[(e) Pursuant to Texas Occupations Code §701.151, the commission or the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.]

§116.51. *Licensed Dietitians--Fitness of Applicants for Licensure.*

(a) Pursuant to Texas Occupations Code §701.151(b)(2) [§701.151(b)(3)], this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the ability of an applicant to uphold the standards and requirements of the profession [the skills and abilities of an applicant to provide adequate nutrition services]; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of an applicant for licensure the department may request and consider any of the following:

(1) disciplinary actions taken by CDR against the applicant's CDR registration;

[(1) evaluations of supervisors or instructors;]

(2) disciplinary actions taken by another jurisdiction against the applicant's license, registration, or certification held in another jurisdiction;

~~[(2) statements from persons submitting references for the applicant;]~~

~~[(3) evaluations of employers and/or professional associations;]~~

~~(3) [(4)] transcripts or findings from official court, hearing, or investigative proceedings; and~~

~~(4) [(5)] any other information which the commission or department considers pertinent to determining the fitness of an applicant.~~

~~(d) The following actions may be the basis for denying an application [substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant]:~~

~~(1) disciplinary action taken by CDR or another jurisdiction against the applicant [lack of the necessary skills and abilities to provide adequate nutrition services];~~

~~(2) misrepresentation of professional qualifications or affiliations with associations;~~

~~(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;~~

~~(4) use of misleading or false advertising;~~

~~(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;~~

~~(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;~~

~~(7) any misrepresentation in application or other materials submitted to the department; and~~

~~(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.~~

§116.53. Licensed Dietitians--License Term; Renewals.

~~(a) A license held by a licensed dietitian is valid for two years after the date of issuance and may be renewed biennially.~~

~~(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.~~

~~(c) To renew a license, a licensed dietitian must:~~

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

~~[(2) submit proof of successfully completing the Texas Jurisprudence Examination;]~~

~~[(3) successfully pass a criminal history background check;]~~

~~[(4) meet the fitness requirements under §116.51;]~~

~~(2) [(5)] complete twelve (12) hours of continuing education as required under §116.80;~~

~~(3) [(6)] comply with the continuing education audit process described under §116.82, as applicable; and~~

~~(4) [(7)] submit the fee required under §116.110.~~

(d) The licensed dietitian must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(e) The licensed dietitian must meet the fitness requirements under §116.51.

(f) For each license renewal on or after September 1, 2020, the licensed dietitian must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(g) [(d)] The commission, executive director, or department shall renew the license of the licensee who has met all requirements for renewal, except as provided under Texas Occupations Code §701.304 and §701.401 [in the following sections].

[(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.]

[(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.]

(h) [(g)] A person whose license has expired may late renew the license in accordance with §60.31 and §60.83.

(i) [(h)] A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dietitian" or use the letters "LD", and may not use any facsimile of those titles in any manner.

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SUBCHAPTER I. CONTINUING EDUCATION

16 TAC §§116.80 - 116.82

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.80. Continuing Education--General Requirements and Hours.

~~[(a) Licensed dietitians are required to take continuing education.]~~

~~[(b)] A licensed dietitian must complete a minimum of twelve (12) continuing education hours during each two-year licensing period.~~

~~[(e) The hours must have been completed prior to the date of expiration of the license.]~~

§116.81. Continuing Education--Approved Courses and Credits.

(a) The department has determined that to meet the continuing education requirements under the Act and this chapter a licensee must take the courses and hours offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(b) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

- (1) academic courses related to dietetics;
- (2) clinical courses related to dietetics;
- (3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics;
- (4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six (6) poster sessions with a maximum of two clock hours for twelve (12) poster sessions;

(6) books or articles published by the licensee in relevant professional books and referred journals. A minimum of three (3) continuing education hours will be credited for the publication; or

(7) self-study of professional materials that include self-assessment examinations. Six (6) hours maximum will be credited for self-study during the two-year licensure period.

(c) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before ~~[or after]~~ the current license term ~~[period of time described in subsection (a)(1)]~~;

(4) activities described in subsection (b), which have been completed more than once during the current license term ~~[continuing education period]~~;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

(d) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the

basis of two clock hours of credit for each semester hour successfully completed for credit or audit.

(2) An activity which meets the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with Continuing Professional Education (CPE) ~~[CPE]~~ as approved by the Academy.

(3) A licensee may complete the Texas Jurisprudence Examination as part of the 12 continuing education hours. One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.

~~[(e) The Texas Jurisprudence Examination shall be required as follows:]~~

~~[(1) The licensee must successfully complete the Texas Jurisprudence Examination for renewal.]~~

~~[(2) Proof of successfully completing the examination must be retained by the licensee as required in §116.82.]~~

~~[(3) One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.]~~

§116.82. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The licensee ~~[license holder]~~ shall be responsible for maintaining a record of the licensee's ~~[his or her]~~ continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the licensee ~~[license holder]~~ has been selected for audit.

(b) The audit process shall be as follows:

(1) The department shall select for audit a random sample of licensees ~~[license holders]~~ for each renewal month. Licensees ~~[License holders]~~ will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee ~~[license holder]~~.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted, and approved by the department.

(5) Licenses will not be renewed until continuing education requirements have been met.

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

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SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §116.90

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeal.

§116.90. Registry.

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 K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§116.100, 116.101, 116.104, 116.105

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.100. Display of License.

~~(a) This section applies to licensed dietitians.~~

~~(a) [(b)] The license certificate must be displayed in an appropriate and public manner as follows.~~

(1) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(2) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

~~(b) [(e)] Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.~~

~~(c) [(4)] Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.~~

~~(d) [(e)] Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.~~

§116.101. Changes of Name or Address.

~~[(a) This section applies to licensed dietitians.]~~

~~(a) [(b)] The licensee shall notify the department of changes in name or mailing address within thirty (30) days of such change(s) on a department-approved form or using a department-approved method.~~

~~(b) [(e)] Notification of name changes must be submitted [mailed or faxed] to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.~~

~~(c) To receive a duplicate license, the [The] licensee shall submit the duplicate/replacement fee required under §116.110.~~

§116.104. Unlawful, False, Misleading, or Deceptive Advertising.

~~(a) A licensee shall use factual information to inform the public and colleagues of the licensee's [his/her] services. A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.~~

~~(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes, but is not limited to, advertising that:~~

~~(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;~~

~~(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;~~

~~(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;~~

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

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

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

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

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

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

(c) As used in this section, a "health care professional" includes a licensed dietitian or any other person licensed, certified, or registered by the state in a health-related profession.

§116.105. *Code of Ethics.*

(a) Professional representation and responsibilities.

(1) A licensee shall act [~~conduct himself/herself~~] with honesty, integrity, and fairness.

(2) A licensee shall not misrepresent any professional qualifications or credentials. A licensee shall not make any false or misleading claims about the efficacy of any nutrition services or dietary supplements.

(3) A licensee shall not permit the use of the licensee's [~~his/her~~] name for the purpose of certifying that nutrition services have been rendered unless that licensee has provided or supervised the provision of those services.

(4) A licensee shall not promote or endorse products in a manner that is false or misleading.

(5) A licensee shall disclose to a client, a person supervised by the licensee, or an associate any personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate.

(6) A licensee shall maintain knowledge and skills required for professional competence. A licensee shall provide nutrition services based on scientific principles and current information. A licensee shall present substantiated information and interpret controversial information without bias.

(7) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutrition services.

(8) A licensee shall comply with the provisions of the Texas Controlled Substances Act, [the] Health and Safety Code, Chapter 481; [~~and~~] the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483; relating to dangerous drugs; and any rules of the Department of State Health Services [department] or the Texas State Board of Pharmacy implementing those chapters.

(9) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of commission rules to the department.

(10) A licensee shall comply with any order relating to the licensee which is issued by the commission or the executive director.

(11) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(12) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation relating to the services of the licensee, any person supervised by the licensee or any dietary supplement.

(13) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the Academy or Commission on Dietetic Registration, and other professional or governmental bodies. A licensee shall recognize and exercise professional judgment within the limits of the licensee's [~~his/her~~] qualifications and collaborate with others, seek counsel, or make referrals as appropriate.

(14) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(15) A licensee shall report information if required by the following statutes:

(A) Texas Family Code, Chapter 261, concerning abuse or neglect of minors; or

(B) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly persons or persons with disabilities [~~disabled persons~~].

(b) Professional relationships.

(1) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(2) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(3) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(4) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(5) A licensee shall provide nutrition services without discrimination based on race, creed, gender, religion, national origin, or age.

(6) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records. A licensee shall protect confidential information and make full disclosure about any limitations on the licensee's [~~his/her~~] ability to guarantee full confidentiality.

(7) A licensee shall not engage in sexual contact with a client. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, §21.01, and includes sexual intercourse. A licensee shall not engage in sexual harassment in connection with professional practice.

(8) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(9) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(10) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(11) A licensee shall provide sufficient information to enable clients and others to make their own informed decision regarding nutritional services.

(12) A licensee shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. A licensee

shall make full disclosure when a real or potential conflict of interest arises.

(c) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for client nutrition services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(d) A licensee may not persistently or flagrantly overcharge or overtreat a client.

(e) A licensee shall be subject to disciplinary action by the commission or department if [~~under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31,~~] the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has been convicted and ordered to pay court costs under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B (effective until January 1, 2021) and Chapter 56B (effective on January 1, 2021) [~~; Article 56.55~~].

(f) A violation of any provision of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application.

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SUBCHAPTER M. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§116.120 - 116.123

STATUTORY AUTHORITY

These amended and new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.120. *Complaints [Regarding Standard of Care].*

(a) The commission has adopted rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031. These rules are located at 16 Texas Administrative Code Chapter 100.

(b) A qualified person may assist the department in the review and investigation of complaints and will be immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(c) The provisions regarding the confidentiality of complaint and disciplinary information are provided under Texas Occupations Code §51.254.

§116.121. *Administrative Penalties and Sanctions.*

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 701, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 701, as applicable, and any associated rules.

§116.122. *Enforcement Authority.*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 701 and any associated rules may be used to enforce Texas Occupations Code, Chapter 701 and this chapter.

§116.123. *License Surrender.*

Pursuant to Texas Occupations Code §701.351(b), a license issued by the department is the property of the department and shall be surrendered on demand.

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §§116.130 - 116.132

STATUTORY AUTHORITY

The repeals are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeals.

§116.130. *Administrative Penalties and Sanctions.*

§116.131. *Enforcement Authority.*

§116.132. *License Surrender.*

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SUBCHAPTER O. THE DIETETIC PROFESSION

16 TAC §116.141, §116.142

STATUTORY AUTHORITY

These amended rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§116.141. Provider of Nutrition Services.

(a) A person licensed by the department is designated as a health care provider of nutrition services.

(b) A licensed dietitian, acting within the scope of the dietitian's [his or her] license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual patient or group of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(c) A licensed dietitian, acting within the scope of the dietitian's [his or her] license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Texas Occupations Code, Chap-

ter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

§116.142. Licensed Dietitians Providing Diabetes Self-Management Training.

(a) This section implements the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055.

(b) Diabetes self-management training covers the following training:

(1) training provided to a qualified enrollee after the initial diagnosis of diabetes in the care and management of that condition, including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified enrollee's symptoms or condition that requires changes in the qualified enrollee's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) A licensed dietitian who provides diabetes self-management training as a member of a multi-disciplinary team must meet the following requirements:

(1) Prior to beginning to provide diabetes self-management training as member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), shall confine the licensed dietitian's [his or her] professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of the licensed dietitian's [his or her] professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) A licensed dietitian who provides the nutrition component of diabetes self-management training must meet the following requirements:

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(4), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the department

completion of at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(e) The continuing education completed under this section shall meet the requirements described in Subchapter I, Continuing Education. The continuing education completed under this section may be part of the credits required for renewal of a license.

(f) Upon written request by the department, the licensed dietitian shall submit to the department proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the department.

(g) This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(h) This section does not pertain to or restrict a licensed dietitian who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the department, to a person:

(1) who is not a qualified enrollee as defined in the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.051;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare 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 February 10, 2020.

TRD-202000534

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 22, 2020

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



CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

16 TAC §120.26

The Texas Department of Licensing and Regulation (Department) proposes amendments to the existing rule at 16 Texas Administrative Code (TAC), Chapter 120, §120.26, regarding the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners Program. These proposed changes are referred to as "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 120, implement Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists. The proposed rule is necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 amends the Occupations Code by adding new Chapter 116, Training Course on Human Trafficking

Prevention, which requires certain health care practitioners, including licensed dyslexia therapists and licensed dyslexia practitioners, to successfully complete a training course approved by the executive commissioner of the Health and Human Services Commission (HHSC) on identifying and assisting victims of human trafficking as a condition for renewal of a license on or after September 1, 2020. The proposed rule adds proof of completion of such training to the list of items required for renewal of a licensed dyslexia therapist license and a licensed dyslexia practitioner license on or after September 1, 2020.

The proposed rule was presented to and discussed by the Dyslexia Therapists and Practitioners Advisory Committee at its meeting on January 27, 2020. The Advisory Committee did not make any changes to the proposed rules. The Advisory Committee recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §120.26, Renewal, by changing subsection (b) to include the requirement for proof of completion of the human trafficking prevention training to be submitted to the Department for renewal of a license on or after September 1, 2020. The previously-existing language in subsections (b) - (d) is transferred to subsections (c) - (e), respectively, resulting in the creation of new subsection (e).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the increased education and awareness of licensees on how to identify the signs of human trafficking.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Eco-

conomic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does create a new regulation. The proposed rule implements a new requirement created by HB 2059 for licensed dyslexia therapists, licensed dyslexia practitioners, and certain other healthcare practitioners to complete a human trafficking prevention training course as a condition of license renewal on or after September 1, 2020.
6. The proposed rule does not expand, limit, or repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 403, which authorize the Texas Commission of

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

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51, 116, and 403. No other statutes, articles, or codes are affected by the proposed rule.

§120.26. *Renewal.*

(a) To renew a license, a license holder must:

- (1) submit a complete renewal application on a department-approved form;
- (2) successfully pass a criminal history background check;
- (3) complete 20 hours of continuing education required under §120.25;
- (4) comply with the continuing education audit process described under §120.25, as applicable; and
- (5) submit the fee required under §120.80.

(b) For each license renewal on or after September 1, 2020, the licensed dyslexia therapist and the licensed dyslexia practitioner must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(c) [(b)] Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license, shall not excuse failure to apply for renewal or late renewal.

(d) [(e)] A person whose license has expired may late renew the license in accordance with §60.31 (relating to License Renewal Applications) and §60.83 (relating to Late Renewal Fees) of this title.

(e) [(d)] A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dyslexia therapist" or "licensed dyslexia practitioner" and may not use any facsimile of those titles in any manner.

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 February 10, 2020.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 436-3671



CHAPTER 121. BEHAVIOR ANALYST

16 TAC §§121.10, 121.21, 121.22, 121.26, 121.70, 121.75, 121.95

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.10, 121.21, 121.22, 121.26, 121.70, 121.75, and 121.95, regarding the

Behavior Analysts program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 121 implement Texas Occupations Code, Chapter 506, Behavior Analysts.

The proposed rules implement §7.003 of House Bill (HB) 2847, Article 7, 86th Legislature, Regular Session (2019), which amends Texas Occupations Code Chapter 51, adding new subsection 51.252(e) regarding contracting with and providing immunity for individuals assisting in complaint investigations. The proposed rules also implement §1 of HB 2059, 86th Legislature, Regular Session (2019), which adds Chapter 116 to the Texas Occupations Code, imposing a requirement for a training course on human trafficking prevention as a condition for certain license renewals on or after September 1, 2020. The proposed rules are also necessary to implement recommendations from the Behavior Analyst Advisory Board (Advisory Board) to significantly reorganize, expand, and provide specifics for the responsibilities and ethics code of license holders, including expanding the definitions section.

The Board and staff also included specific requirements for acceptable abbreviation of license holders' titles under the Act, new and updated references to statutes and rules, editorial corrections, and rewording. The proposed rules are the first amendments of the rules following the creation of the Behavior Analyst licensing program at the Department in the 85th Legislative Session in 2017.

The Standard of Care workgroup of the Advisory Board met on May 23, July 18, and October 29 of 2018, and on September 16, 2019 to deliberate and create the rule amendments. The proposed rules were presented to and discussed by the Advisory Board at its meetings on December 6, 2018 and again on January 29, 2020. The Advisory Board made one change to the proposed rules, replacing "and" with "or" between parts (A) and (B) of the definition of "client." The Advisory Board voted and recommended that the proposed rules with this change be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §121.10 by adding definitions for "authorized representative," "multiple relationship," "service agreement," and "treatment plan," and expand the definition of "client." The section is renumbered accordingly.

The proposed rules amend §121.21 by providing for acceptable abbreviations of the licensed behavior analyst title.

The proposed rules amend §121.22 by providing for acceptable abbreviations of the licensed assistant behavior analyst title.

The proposed rules amend §121.26 by adding the new requirement for human trafficking prevention training as a condition for license renewals on or after September 1, 2020 and renumbers the section.

The proposed rules amend §121.70 by reorganizing, expanding, clarifying, and adding specificity to the responsibilities of license holders. The section is renumbered accordingly.

The proposed rules amend §121.75 by reorganizing, expanding, clarifying, and adding specificity for minimum standards of ethical practice for behavior analysis. The section is renumbered accordingly.

The proposed rules amend §121.95 by implementing Texas Occupations Code §51.252, which provides immunity for assisting in the review and investigation of complaints. The proposed rules also remove a requirement for display of the license because the requirement has been moved to §121.70. References to relevant statutes and rules are added and corrected, and the section is renumbered accordingly.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit because the amendments specify more detailed professional obligations and standards for ethical behavior by license holders and require human trafficking prevention training, thus providing for more effective and efficient regulation and enhancing the public health, safety, and welfare.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules elaborate on existing ethical standards and professional obligations already imposed upon license holders by the certifying entity for all current license holders - the Behavior Analyst Certification Board (BACB), and by the Texas Behavior Analyst rules, adding specificity and clarity. For example, the BACB Professional and Ethical Compliance Code for Behavior Analysts requires license holders to prepare written agreements for behavior analysis services; the Texas rules specify minimum items of information to be included in those agreements. HB 2059 sets out the requirement for license holders to complete human trafficking prevention training and requires that the Health and Human Services Commission must provide at least one free option. Therefore, Mr. Couvillon anticipates that there will be no economic cost to license holders to update agreements or to otherwise comply with the proposed rule changes.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses or rural communities, preparation of an Economic Impact Statement and Regulatory Flexibility Analysis,

as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules implement changes due to House Bill 2847 and HB 2059 and will create a new regulation (rule) requiring license holders to complete a HHSC-approved human trafficking prevention training course as a condition of license renewal. This requirement becomes effective September 1, 2020. The proposed rules add definitions, expand the license holder's responsibilities, and expand the Code of Ethics.
6. The proposed rules do not limit or repeal an existing regulation but do expand an existing professional obligation and ethical standards already imposed upon license holders by adding specificity to current requirements.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.10. Definitions.

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

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

(5) Authorized representative--A person or entity that is authorized to represent the interests of the client and to perform functions including making decisions about behavior analysis services.

(6) [~~5~~] Behavior Analyst Certification Board (BACB)--a certifying entity for persons practicing behavior analysis.

(7) [~~6~~] Client--A person who is receiving behavior analysis services from a license holder for the person's own treatment purposes, or a person or entity who is not receiving behavior analysis services from a license holder for their own treatment purposes including:

(A) an authorized representative of the person receiving behavior analysis services for the person's own treatment purposes; or

(B) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity.

(8) [~~7~~] Commission--The Texas Commission of Licensing and Regulation.

(9) [~~8~~] Department--The Texas Department of Licensing and Regulation.

(10) [~~9~~] Executive director--The executive director of the department.

(11) [~~10~~] License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(12) [~~11~~] License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(13) Multiple relationship--A personal, professional, business, or other type of interaction by a license holder with a client or with a person or entity involved with the provision of behavior analysis services to a client that is not related to, or part of, the behavior analysis services.

(14) Service agreement--The signed written contract for behavior analysis services. The service agreement includes responsibilities and obligations of all parties and the scope of behavior analysis services to be provided. The service agreement may be identified by other terms including treatment agreement, Memorandum of Understanding (MOU), or Individualized Education Program (IEP).

(15) Treatment plan--The written behavior change program for an individual client. The treatment plan includes consent, objectives, procedures, documentation, regular review, and exit criteria. The treatment plan may be identified by other terms including Behavior Intervention Plan, Behavior Support Plan, Positive Behavior Support Plan, or Protocol.

§121.21. Behavior Analyst Licensing Requirements.

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

(d) Persons who hold a current Texas license may use the title "licensed behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LBA," "L.B.A.," "TXLBA," or "TX. L.B.A."

§121.22. Assistant Behavior Analyst Licensing Requirements.

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

(d) Persons who hold a current Texas license may use the title "licensed assistant behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LaBA," "L.a.B.A.," "TXLaBA," or "TX. L.a.B.A." The letter "a" representing the word "assistant" may not be capitalized unless the abbreviation clearly represents the word "assistant," including "Lic. Asst. BA," "TX L. Assist. B.A." or similar.

§121.26. Renewal.

(a) To renew a license, a license holder must:

(1) (No change.)

(2) submit the fee required under §121.80; ~~and~~

(3) demonstrate completion, in a manner prescribed by the department, of human trafficking prevention training required under Texas Occupations Code, Chapter 116, for each license renewal on or after September 1, 2020; and

(4) [(3)] successfully pass a criminal history background check.

(b) - (h) (No change.)

§121.70. Responsibilities of License Holders.

(a) (No change.)

(b) Administrative Practice Responsibilities. A license holder shall:

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

(8) when creating [provide a client or a minor client's parent or authorized representative with] a written agreement for services, comply with applicable professional and ethical standards and requirements including those of the license holder's certifying entity [prior to the commencement of behavior analysis services].

[(A) The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties.]

[(B) Any subsequent modifications to the agreement shall be signed and dated by both parties.]

(9) upon revision or amendment of a written agreement for services, obtain the signatures of all parties.

(10) [(9)] maintain legible and accurate records of behavior analysis services rendered. A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the

recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.

of: (11) [(40)] maintain records for a minimum of the longer

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

(12) [(41)] not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.

(13) [(42)] display the current original license certificate as issued by the department in the primary location of practice, if any, or in the license holder's business office, but shall not display a license that has been photographically or otherwise reproduced.

(14) carry and display a department-issued duplicate of the current license certificate or license card or an unmodified image of the department-issued license certificate or license card, as appropriate and necessary, at locations other than the primary location of practice. The license holder shall produce the current original department-issued license certificate or license card upon request.

(15) use electronic methods to create, amend, or sign documents, and accept signatures of clients on documents related to the provision of behavior analysis services, only in accordance with applicable law.

(c) Professional Services Practice Responsibilities. A license holder shall:

(1) enter into a service agreement with a client, as defined in §121.10(7), when behavior analysis services are to be provided;

(A) The services to be delivered shall be described in a service agreement and may include the following activities: consultation, assessment, training, treatment design, treatment implementation, and treatment evaluation.

(B) A treatment plan shall be created when the service agreement provides for a behavior analyst to deliver treatment to an individual.

(C) A treatment plan is not required if a behavior analyst will not deliver treatment to an individual.

(2) include in the service agreement or otherwise document and disclose to the client, as appropriate;

(A) conflicts of interest or multiple relationships that the license holder is aware of or becomes aware of, as defined in §121.10;

(B) a description of how a conflict of interest or multiple relationship will be addressed if one is discovered or disclosed;

(C) the acknowledgment of known conflicts of interest or multiple relationships and agreement to begin or to continue behavior analysis services despite them; and

(D) a reasoned justification for beginning or continuing to provide behavior analysis services if conflicts of interest or multiple relationships are acknowledged;

(3) re-evaluate treatment progress as needed and at least annually, and document the evaluation; and

(4) comply with all applicable requirements of the license holder's certifying entity including the BACB Professional and Ethical

Compliance Code for Behavior Analysts when entering into service agreements and providing behavior analysis services.

(d) [(e)] If any requirement of a license holder's certifying entity differs in stringency from a requirement of the Act or the commission rules, the more stringent provision shall apply.

(e) [(d)] If any requirement of a license holder's certifying entity conflicts with a requirement of the commission rules such that the license holder cannot reasonably comply with both requirements, the license holder shall comply with the requirement of the certifying entity.

§121.75. *Code of Ethics.*

(a) (No change.)

(b) License holders shall comply with the following ethical standards when providing behavior analysis services. All license holders shall:

(1) comply with all provisions of the Act and this chapter, as well as any other state or federal law or rule that applies to the provision of behavior analysis services by, or the regulation of, the license holder.

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

(4) accurately and truthfully represent the license holder's [his or her] education, training, credentials, and competence.

(5) - (8) (No change.)

[(9) refrain from participating in inappropriate or exploitative multiple relationships.]

(9) [(40)] not guarantee, directly or by implication, the results of any behavior analysis services, except that a reasonable statement of prognosis may be made. A license holder shall not mislead clients to expect results that cannot be predicted from reliable evidence.

(10) [(41)] obtain written consent from a client [or a minor client's parent or authorized representative] in order to use the client's data or information for research or teaching activities.

(11) [(42)] reveal confidential or personal information about a client only with authorization unless:

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

(12) [(43)] document any confidential or personal information disclosed, the person or entity to whom it was disclosed, and the justification for disclosure in the client's record if a license holder reveals such information about a client without authorization.

(13) [(44)] if requested, provide an explanation of the charges for behavior analysis services previously made on a bill or statement in writing and in plain language [provide, in plain language, a written explanation of the charges for behavior analysis services previously made on a bill or statement, upon the written request of a client or the minor client's parent or authorized representative].

(14) [(45)] if requested, accurately represent and describe any product created or recommended by the license holder that is used or will be used in providing behavior analysis services to the client.

[(16) not require the purchase by a client of any product created or produced by the license holder.]

[(17) not use his or her professional relationship with a client to promote any product for personal gain or profit, unless the license holder has disclosed to the client the nature of the license holder's personal gain or profit.]

(15) [(18)] not offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage.

(16) [(19)] not [persistently or flagrantly] overcharge a client or third party.

(17) [(20)] not [persistently or flagrantly] over treat a client.

(18) [(21)] terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services.

(19) [(22)] seek to identify competent, dependable referral sources for clients and shall refer when requested or appropriate.

(20) [(23)] not sell, barter, or offer to sell or barter a license.

[(24) refrain from engaging in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the behavior analysis services being provided to the client.]

(21) [(25)] refrain from practicing behavior analysis if, due to illness or use of alcohol, drugs or medications, narcotics, chemicals or other substances, or from mental or physical conditions, the license holder [person] is incapable of practicing with reasonable skill and safety to clients in the provision of behavior analysis services.

(22) refrain from engaging in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the behavior analysis services being provided to the client.

(23) refrain from participating in inappropriate or exploitative multiple relationships. Inappropriate or exploitative multiple relationships are prohibited.

(A) Inappropriate or exploitative relationships include, but are not limited to, relationships in which:

(i) the license holder's objectivity is impaired or likely to be impaired;

(ii) the license holder's ability to provide competent services is impaired or prevented;

(iii) the relationship is or reasonably could be harmful to the well-being of a client, supervisee, employee, student, or other person involved in the provision of behavior analysis services with the license holder, including the person's emotional, psychological, physical, social, or financial well-being;

(iv) the relationship creates or could create a conflict of interest among the license holder and a client or any person or en-

tity involved in or connected with the provision of behavior analysis services to a client, unless the conflict of interest has been addressed in accordance with §121.70(c)(2); or

(v) the license holder receives an advantage, benefit, or thing of value other than regular compensation for behavior analysis services provided.

(B) Inappropriate or exploitative relationships may include unprofessional behavior such as: deception; trickery; undue pressure or influence, including giving or acceptance of gifts; intimidation; or threats; but need not be accompanied by such behaviors to be inappropriate or exploitative.

(C) Multiple relationships, other than those related to the provision of behavior analysis services or that have been addressed in accordance with §121.70(c)(2), between the license holder and the following may be considered inappropriate or exploitative unless evidence demonstrates otherwise:

(i) client;

(ii) authorized representative of the client;

(iii) spouse or significant other of the client;

(iv) cohabitants of the client;

(v) first-degree and second-degree relatives of the client; and

(vi) persons with whom the client shares a close personal, business, or financial relationship.

(D) Except as provided in §121.70(c)(2), multiple relationships are prohibited:

(i) during the provision of behavior analysis services to the client;

(ii) for a minimum of two years after behavior analysis services have ended;

(iii) at all times after behavior analysis services have ended if behavior analysis services for the same client are reasonably expected to be requested from the license holder again; and

(iv) indefinitely until there is reasonable certainty that the potential for harm to the client is unlikely.

(c) Information used by a license holder in any advertisement or announcement shall not contain information that is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

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

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

(6) (No change.)

§121.95. *Complaints.*

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

[(e) A license holder shall display the license certificate as issued by the department in the primary location of practice, if any.]

(c) [(d)] A license holder shall not make any alteration on official documents issued by the department.

(d) The commission has adopted rules in Chapter 100 of this title related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

[(e) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential in accordance with §506.202 of the Act.]

(e) A qualified person may assist the department in the review and investigation of complaints and is immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(f) Provisions regarding the confidentiality of complaint and disciplinary information under this chapter are located in Texas Occupations Code §51.254.

(g) [(f)] The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with Texas Occupations Code §51.254 [§506.202 of the Act].

(h) [(g)] For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Texas Occupations Code, or that is determined to be a health profession under other law.

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

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000551

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 463-3306



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY [PREVENTION MEASURES AND SANCTIONS]

19 TAC §129.1049

The Texas Education Agency (TEA) proposes new §129.1049, concerning truancy. The proposed new section would reflect the new truancy reporting requirements enacted by House Bill (HB) 548, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 548, 86th Texas Legislature, 2019, added a new reporting requirement in Texas Education Code (TEC), §42.006(a-6). The new requirement specifies that each school district and open-enrollment charter school must report the following information through the Public Education Information Management System (PEIMS): the number of children who are required to attend school under TEC, §25.085, are not exempted under TEC,

§25.086, and fail to attend school without excuse for 10 or more days or parts of days within a 6-month period in the same school year; the number of students for whom the district initiates a truancy prevention measure under TEC, §25.0915(a-4); and the number of parents of students against whom an attendance officer or other appropriate school official has filed a complaint under TEC, §25.093.

Proposed new §129.1049 would implement HB 548 by including in rule the truancy data required by statute and specifying that the data must be reported annually through the Texas Student Data System (TSDS) PEIMS.

The proposal would also update the subchapter title to better align with the content within the subchapter.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by requiring local education agencies to annually report new data through the TSDS PEIMS.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Conlon has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language reflects the statutory reporting requirements related to truancy data. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would require local education agencies to annually report new truancy data elements through the TSDS PEIMS.

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 21, 2020, and ends March 23, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §42.006(a-6), which requires the reporting of certain truancy data elements through the Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §42.006(a-6).

§129.1049. Truancy Reporting Requirements.

Each school district and open-enrollment charter school shall report truancy data annually through the Texas Student Data System Public Education Information Management System to include:

(1) the number of children who are required to attend school under TEC, §25.085, are not exempted under TEC, §25.086, and fail to attend school without excuse for 10 or more days or parts of days within a 6-month period in the same school year;

(2) the number of students for whom the district initiates a truancy prevention measure under TEC, §25.0915(a-4); and

(3) the number of parents of students against whom an attendance officer or other appropriate school official has filed a complaint under TEC, §25.093.

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 February 10, 2020.

TRD-202000501

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 22, 2020

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS
DIVISION 6. FILINGS MADE EASY -
REQUIREMENTS FOR RATE AND RULE
FILINGS

28 TAC §5.9332

The Texas Department of Insurance proposes to amend 28 TAC §5.9332, relating to workers' compensation classification relativities. The amendment is necessary because Senate Bill 1336, 86th Legislature, Regular Session (2019), eliminated the department's statutory requirement to develop workers' compensation classification relativities, which made paragraph (7)(B) of 28 TAC §5.9332 obsolete.

EXPLANATION. Section 5.9323(7)(B) provides a list of rate change information that must be included in workers' compensation filings using classification relativities established under Insurance Code §2053.051. Amending §5.9332 to delete (7)(B) makes the section consistent with the amendments to Insurance Code §2053.051 made under SB 1336, which eliminate the department's requirement to develop workers' compensation classification relativities. This change to Insurance Code §2053.051 becomes effective on July 1, 2020, therefore, this rule amendment is proposed to be effective July 1, 2020.

Section 5.9332 is amended by deleting paragraph (7)(B) and all the subparts of it. Existing paragraph (7)(C) is redesignated as new paragraph (7)(B). In addition to that amendment, paragraph (3)(A)(viii) is amended to insert a comma following the word "licenses," for consistency with the department's style for punctuation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nicole Elliott, actuary in the Property and Casualty Actuarial Office, has determined that, for each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of the amendment.

Ms. Elliott 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 amendment is in effect, Ms. Elliott expects that it will have the public benefit of ensuring that the department's rules conform to Insurance Code §2053.051.

Ms. Elliott expects that the proposed amendment will not increase the cost of compliance with Insurance Code §2053.051 because it does not impose requirements beyond those in the statute. SB 1336 removed the requirement under Insurance Code §2053.051 for the department to develop workers' compensation classification relativities. As a result, there are no costs associated with this proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The department has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro-businesses, or on rural communities. The proposed amendment removes a provision made obsolete due to a statutory change. Also, this proposal does not impose any new requirements on insurers. 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 a possible cost on regulated persons and thus no additional rule amendments are required under Government Code §2001.0045. Even if the proposal did impose a cost, no additional rule amendments are required because the proposed amendment is necessary to implement legislation. The proposed amendment implements SB 1336, which eliminated the department's statutory requirement to develop workers' compensation classification relativities and made 28 TAC §5.9332(7)(B) obsolete.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- 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. 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 OR PUBLIC HEARING. 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 March 23, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5 p.m. Central time, on March 23, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes amending §5.9332 under Insurance Code §2053.051 as amended by SB 1336 and Insurance Code §36.001.

SB 1336 amended Insurance Code §2053.051 to eliminate the statutory requirement for the department to develop workers' compensation classification relativities.

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 proposal to amend 28 TAC §5.9332 implements Insurance Code §2053.051 as amended by SB 1336.

§5.9332. *Categories of Supporting Information.*

The categories of supporting information addressed in this section describe the different items that may be required or requested in a rate and rule filing. Section 5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions) lists the categories of supporting information that different rate and rule filings require. Categories of supporting information include:

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

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

(i) - (vii) (No change.)

(viii) expenses, including: general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses, and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) - (xiii) (No change.)

(B) - (C) (No change.)

(4) - (6) (No change.)

(7) Rate change information. Rate change information must reflect the changes for all policyholders.

(A) (No change.)

~~{(B) For workers' compensation filings using classification relativities established under Insurance Code §2053.051, rate change information consists of:}~~

~~{(i) the percentage change in the underlying classification relativities;}~~

~~{(ii) the change in the insurer's deviation;}~~

~~{(iii) the combined change in the classification relativities and the insurer's deviation;}~~

~~{(iv) a six-year rate change history; and}~~

~~{(v) the effect that changes in fee income have on the total average rate change.}~~

(B) ~~{(C)}~~ For all other filings, rate change information consists of:

(i) - (iv) (No change.)

(8) - (16) (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 February 5, 2020.

TRD-202000436

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 22, 2020

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.613, §51.614

The Texas Parks and Wildlife Department (the department) proposes new §51.613 and §51.614, concerning Advisory Committees. The new rules would establish the Urban Outreach Advisory Committee and the Accessibility Advisory Committee.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Over the years, the department has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. The department believes that these advisory committees perform a valuable service for the department and the people of Texas.

A majority of Texans now live in urban areas, making it more important than ever that the department be aware of and include urban populations in developing the strategies to execute the department's mission to protect and conserve our natural and cultural heritage. Therefore, the department has determined that it is prudent to establish an urban outreach advisory committee to provide the department with informed assistance in furtherance of the department's goals with respect to impacts on and contributions from urban populations in the state.

Proposed new §51.613 would create the Urban Outreach Advisory Committee, provide for the membership and focus of the committee and establish an expiration date (which is required by statute). The focus of the committee would be the range of department programs and initiatives affecting urban populations, the demographic variety of urban populations in the state, and

the conservation and management organizations that serve urban populations.

Similarly, the department is committed to ensuring that its facilities and programs not only comply with legal requirements affecting persons with disabilities, but to meaningful engagement with that community to gather information and gain understanding of the unique challenges faced by the members of that community in order to make the department's sites, facilities, services, and programs as accessible as possible.

Proposed new §51.614 would create the Accessibility Advisory Committee, provide for the membership and focus of the committee and establish an expiration date (which is required by statute). The committee would be composed of a range of persons affected by disabilities and/or special needs who are interested in issues of accessibility to department sites, facilities, or programs, as well as conservation and management organizations with an interest in or focus on advocacy for disabled persons. The focus of the committee would be the interests of persons with disabilities and/or special needs in the context of department operations and initiatives.

Ann Bright, Chief Operating Officer, has determined that for each of the first five years that the new rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Ms. Bright 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 rules as proposed will be to ensure proper management and effective use of department advisory committees to assist the department in achieving its mission.

There will be no adverse economic effect on persons required to comply with the rules as proposed, since the rule affects only the department.

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, and 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 impact on small businesses. 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 rules will not 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; will create a new regulation (to create the advisory committees); 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 Ann Bright at (512) 389-8558, e-mail: ann.bright@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The new sections are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §2110.005 and §2110.008.

The proposed new sections affect Parks and Wildlife Code, §11.0162.

§51.613. Urban Outreach Advisory Committee (UOAC).

(a) The UOAC is created to advise the department on issues relevant to the department's mission and goals with respect to urban populations in Texas.

(b) The UOAC membership shall consist of not more than 24 persons representing a cross-section of the urban areas in the following metropolitan areas:

- (1) Dallas;
- (2) Fort Worth;
- (3) Greater Houston;
- (4) Austin;
- (5) San Antonio; and
- (6) El Paso.

(c) The UOAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

(d) The UOAC shall expire on July 1, 2022.

§51.614. Accessibility Advisory Committee (AAC).

(a) The AAC is created to advise the department on matters related to the accessibility of department programs, sites, facilities, and services by persons with disabilities and/or special needs.

(b) The AAC membership shall consist of, at a minimum, nine persons who are affected directly or indirectly by disabilities and/or special needs, including, but not limited to:

- (1) members of the following communities:
 - (A) deaf or hearing-impaired;
 - (B) blind or visually impaired;

(C) intellectually or developmentally impaired;

(D) emotionally or behaviorally impaired; and

(2) representatives of conservation and management organizations with an interest in or focus on advocacy for disabled persons.

(c) The AAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

(d) The AAC shall expire on July 1, 2022.

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 February 10, 2020.

TRD-202000509

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 389-4775



CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to §§57.973, 57.981, 57.992, 57.993, and 57.997, concerning the Statewide Recreational and Commercial Fishing Proclamations.

The proposed amendment to §57.973, concerning Devices, Means and Methods would add a section of Brushy Creek (Williamson County) to the list of locations where game and non-game fishes can only be taken by pole and line and would limit anglers to the use of no more than two pole-and-line devices at the same time. The stream segment affected by the proposed amendment is from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line (approximately 50 miles). Brushy Creek Reservoir currently is subject to this regulation. A survey of anglers who use both the reservoir and creek waters determined that both waters are heavily used, and some anglers fished both in one day. The proposed amendment would standardize regulations on the reservoir and the creek downstream, which should simplify compliance and enforcement. Additionally, the cities surrounding these water bodies recently have experienced rapid population growth and restriction of harvest methods to pole and line would serve to limit the harvest of some fishes such as sunfish, which could benefit the overall fish community and the angling experience.

The proposed amendment to §57.981, concerning Bag, Possession and Length Limits would implement changes to harvest regulations for largemouth bass, crappie, and catfish on multiple locations.

The proposed amendment to §57.981 would modify harvest regulations for largemouth bass on Moss Lake (Cooke County), replacing the current regulation (14-inch minimum length limit and five-fish daily bag limit) with a 16-inch maximum length

limit and providing an exception for temporary possession of bass 24 inches or greater for possible submission to the department's ShareLunker program. Moss Lake is a 1,140-acre impoundment located in near Gainesville. The bass fishery at the reservoir currently consists of largemouth and spotted bass, but angler creel surveys indicate largemouth bass are the most sought-after species. While bass are relatively abundant in the reservoir, electrofishing surveys indicate that very few legal-size (14 inches) largemouth bass are present in the population. Although surveys indicate few legal-size largemouth bass, the reservoir does support some large bass, with a few exceeding eight pounds. Spotted bass are abundant, with few exceeding 14 inches in length and samples consist mostly of fish less than 12 inches in length. Spotted bass compete with largemouth bass for forage and contribute to an overabundance of bass less than 12 inches in length. Implementation of a 16-inch maximum length limit on largemouth bass would allow anglers to harvest the abundant smaller fish that potentially could be causing fewer bass to reach larger sizes. Since some anglers have difficulty in distinguishing spotted bass from largemouth bass, opening harvest to all small bass would allow anglers to harvest both species without differentiation.

The proposed amendment to §57.981 also would modify harvest regulations for largemouth bass on Brushy Creek Reservoir and blue and channel catfish in the section of Brushy Creek (both in Williamson County) mentioned previously in this rulemaking. Harvest of largemouth bass in the reservoir is low. The current 18-inch minimum length limit is not benefitting the bass population and implementation of a 14-inch minimum length limit will have little impact. As noted previously in this rulemaking with respect to proposed changes to device restrictions, the standardization of regulations between the reservoir and Brushy Creek will enhance compliance and enforcement.

Additionally, the proposed amendment would replace the current harvest regulations for blue and channel catfish for Brushy Creek Reservoir (12-inch minimum length limit and 25-fish daily bag limit) with a five-fish daily bag limit and no minimum length limit. This type of regulation is appropriate in high-use situations, such as smaller urban water bodies, to allow anglers to harvest some fish while distributing the available harvest to as many anglers as possible. Replacing the current regulation would result in standardization of regulations and beneficial harvest reduction.

The proposed amendment to §57.981 also would modify harvest regulations for black and white crappie for Lake Nasworthy, which is a 1,380-acre reservoir in San Angelo (Tom Green County). The reservoir has a relatively stable water level for West Texas and abundant shoreline access. The crappie population in Lake Nasworthy has long been characterized by high abundance, slow growth, below average condition, and poor size structure. Slower growth results in fewer crappie reaching legal size, as most crappie die of natural causes before growing large enough to be harvested. The combination of these factors negates any advantages to the population structure that could be derived from the use of a minimum length limit (MLL). Understandably, anglers are dissatisfied with lack of harvestable sized fish in the reservoir and have expressed support for modifying harvest regulations to allow for some take of crappie less than 10 inches in length. An increased harvest of smaller crappie may reduce overcrowding, improve fish condition, and increase angler satisfaction.

The proposed amendment to §57.981 also would make changes to the harvest regulations for blue, channel, and flathead catfish on Lake Texoma (Cooke and Grayson counties) and the Texas waters of the Red River from the dam on Lake Texoma (Denison Dam) downstream to Shawnee Creek. Harvest regulations on Lake Texoma, a 74,686-acre reservoir that straddles the Texas/Oklahoma border, are implemented cooperatively by TPWD and the Oklahoma Department of Wildlife Conservation (ODWC). Currently, harvest regulations for game fishes are the same on both sides on the reservoir. However, some harvest regulations on the Red River below Lake Texoma differ from those on the reservoir and from Texas statewide harvest regulations. With the goal of standardizing regulations on both sides of Lake Texoma and the waters of the Red River below the Denison Dam while maintaining angling opportunities, the proposed amendment would alter harvest regulations for blue, channel, and flathead catfish Texas waters of Lake Texoma and the Red River from Denison Dam downstream to Shawnee Creek. For blue and channel catfish, the proposed amendment would eliminate the minimum length limit and allow the harvest of one blue catfish 30 inches or greater. For flathead catfish, the proposed amendment would eliminate the minimum length limit and impose a five-fish daily bag limit.

The proposed amendment also would eliminate a time constraint on a special regulation governing the harvest of alligator gar on Falcon International Reservoir (Starr and Zapata counties). The department conducted a comprehensive study at the reservoir in 2014 to obtain the biological information necessary to make management recommendations for alligator gar. In 2015, the Texas Parks and Wildlife Commission implemented a bag limit of five alligator gar on the reservoir, directed staff to monitor the alligator gar population to determine any negative effects of the five-fish daily bag, and placed an expiration date on the special provision of September 1, 2020. Monitoring data from the reservoir continues to support the determination that the Falcon Reservoir alligator gar population can be sustained under the five-fish daily bag. Therefore, the proposed amendment would continue the effectiveness of the special provision.

Finally, the proposed amendment would alter recreational harvest regulations for flounder. On the basis of pronounced downward trends in fishery independent data (bag seines, bay trawls, gill nets) which showed declines in catch-per-unit-effort (abundance), and declining commercial and recreational landings, the department has determined that measures must be implemented to protect and replenish spawning stock biomass in the fishery. Recent department fishery-independent gill net survey monitoring data for both the fall and the spring have shown decreases in catch rates of 60% or greater compared to historic long-term data trends. Additionally, other fishery-independent data (bag seines and bay trawls) also show similar declining trends. These independent data collections target flounder at different points in the life cycle and thus provide a measure of recruitment (bag seines), sub-adults (bay trawls) and adults (gill nets).

Lower levels of recruitment observed in fisheries-dependent bag seines may also be impacted by the warmer water temperatures experienced in the bays and gulf in more recent years. Research into the cultivation of flounder has shown that optimal larval survival of flounder is dependent on a very narrow range of temperatures from 16° C - 20° C (60.8° F- 68.0° F) for the first three weeks after spawn (usually in November to December). Current flounder harvest regulations consist of a 14-inch minimum length, a five-fish daily bag and possession limit for recreational

take, and a 30-fish commercial daily bag and possession limit for commercial take, except for during the period from November 1-December 14, when there is a two-fish daily bag and possession limit for both recreational and commercial take. During the month of November, means of take is limited to pole-and-line only. The proposed amendment would increase the minimum length limit to 15 inches and close the season from November 1 - December 14 for both commercial and recreational harvest. At 14 inches, approximately 50% of female flounder are sexually mature. At 15 inches, over 90% of females are sexually mature. Reducing flounder harvest prior to and during the fall migration will increase escapement of adults to the Gulf and can increase the potential spawning population; and therefore, increase recruitment. Additionally, the increase in minimum size will allow more females to reach sexual maturity and spawn before being harvested. Since most of the flounder harvest is comprised of females and occurs during spawning, the proposed amendments are projected to increase spawning stock biomass.

The proposed amendment to §57.992, concerning Bag, Possession, and Length Limits, would alter commercial harvest regulations for flounder, for the same reasons presented earlier in this preamble in the discussion of recreational harvest regulations for flounder.

The proposed amendment to §57.993, concerning Commercial Harvest Report, would clarify reporting requirements. The department has determined that the rule as currently worded does not make clear that certain licensees are required to report all aquatic products taken under the respective licenses, not just the portion of aquatic product that is sold subsequent to landing. The purpose of the rule is to give the department accurate harvest data on various species, which is then used to inform the department's management decisions on those species. Obviously, if the entirety of commercial harvest is not reported the department's management decisions could be affected.

The proposed amendment to §57.997 would affect provisions concerning licensing requirements for the Paddle Craft All-Water Guide License. The proposed amendment would remove existing language concerning the successful completion of the "Four Star Leader Sea Kayak" training from the British Canoe Union and "Coastal Kayak Day Trip Leading" from the American Canoe Association and replace it with "paddle craft leading course from the American Canoe Association or a department-approved organization." The training courses referenced in the current rule no longer exist and the department seeks to use a generic reference to avoid having to engage in rulemaking each time a course is discontinued or renamed.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

There will be adverse economic effects on certain persons required to comply with the rules as proposed. Those impacts are addressed in the analysis of impacts to small business and microbusiness elsewhere in this preamble.

Mr. Macdonald 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, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the

commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

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 other than those affecting the commercial take of flounder 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 for those provisions.

The proposed amendment to §57.992 will exert an adverse economic impact on small or micro-businesses that catch and sell flounder. Based on the last three years of reporting data, the department estimates that 25 licensees could be affected by the proposed amendment. For the purposes of this analysis, the department assumes that all entities directly affected by the proposed amendment are small or microbusinesses. The proposed amendment would affect licensees who directly target flounder for harvest and those who harvest flounder as bycatch (incidental to other harvest operations).

The proposed amendment would increase the minimum size limit for flounder to 15 inches and close the fishery from November 1 to December 14. Currently, during the November 1-30 closure the bag limit is two fish. Department reporting data indicate that between November 1 and December 14, 2017, nine finfish fishing licensees reported 29 trips, resulting in the landing of 468 pounds of flounder with an average reported sale price of \$4.66 per pound. Between November 1 and December 14, 2018, five finfish fishing licensees reported 23 trips, resulting in the landing of 964 pounds of flounder at an average reported sale price of \$4.41 per pound. Between November 1 and December 14, 2019, 11 finfish fishermen reported 26 trips, resulting in the landing of 346 pounds of flounder at an average reporting price of \$4.39 per pound. Using these data, the department estimates that the probable average economic impact of the proposed rule on small and micro-businesses for licensees taking flounder under a finfish fisherman's license would be a loss of between \$138.09 and \$850.25 per licensee. The average loss for the three-year period is therefore estimated at \$410.22 per licensee, assuming future fishing effort, catch rates, and sales prices remain similar to historic activities.

There will also be adverse economic impacts for licensees who land flounder as incidental catch (bycatch). The probable adverse economic impacts for these licensees would be less than

those for the holders of a finfish fisherman's license (i.e., less than \$410.22) because bycatch aboard shrimp vessels is limited by law to 50 percent by weight of other catch on board, plus a recreational bag limit; thus for any trip where bycatch is landed the limit would have been limited to 2 fish per trip.

Because licensees would be able to shift fishing effort to times outside of the proposed closed season, the department believes that the adverse economic impacts identified in this analysis could be reduced or eliminated.

The department considered and analyzed several alternatives to the proposed rule. The department considered: (1) a 20-fish bag limit with no closure; (2) a 15-fish bag limit with no closure; (3) a 10-fish bag limit with no closure; (4) a closure in November with no change to the bag limit; and (5) a closure in November and December with no change to the bag limit. The department also considered a prohibition on gigging as a means of commercial take. These alternatives were rejected because although they would achieve the department's goal of increasing spawning biomass, each would either impose additional hardship on licensees or result in significant disruption to the current status quo regarding the distribution of opportunity between the commercial and recreational sectors and the various methods of take favored by anglers.

The department has determined that the proposed amendments will not result in adverse economic impacts to rural communities.

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; create a new regulation (by altering harvest and reporting requirements); not repeal, expand, or limit a 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 or Dakus Geeslin (Coastal Fisheries) at (512) 389-8734, e-mail: dakus.geeslin@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comments/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.973

The amendment is 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 amendment affects Parks and Wildlife Code, Chapter 61.

§57.973. *Devices, Means and Methods.*

(a) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(b) Game and non-game fish may be taken only by pole and line in or on:

- (1) community fishing lakes;
- (2) sections of rivers lying totally within the boundaries of state parks;
- (3) any dock, pier, jetty, or other manmade structure within a state park;

(4) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line;

(5) ~~[(4)]~~ Canyon Lake Project #6 (Lubbock County);

(6) ~~[(5)]~~ Lake Pflugerville (Travis County);

(7) ~~[(6)]~~ North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;

(8) ~~[(7)]~~ South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and

(9) ~~[(8)]~~ Wheeler Branch (Somervell County).

(c) No person may employ more than two pole-and-line devices at the same time on:

(1) any dock, pier, jetty, or other manmade structure within a state park;

(2) community fishing lakes that are not within or part of a state park;

(3) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line;

(4) ~~[(3)]~~ Canyon Lake Project #6 (Lubbock County);

(5) ~~[(4)]~~ North Concho River (Tom Green County) from O. C. Fisher Dam to Bell Street Dam; and

(6) ~~[(5)]~~ South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(d) - (g) (No change.)

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

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TRD-202000512

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is 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.

§57.981. *Bag, Possession, and Length Limits.*

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

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

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) - (G) (No change.)

(H) Flounder: all species (including hybrids and subspecies).

(i) (No change.)

(ii) Minimum length limit: 15 [14] inches.

(iii) (No change.)

(iv) The season for flounder is closed from November 1 through December 14 [~~During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.~~]

(I) - (X) (No change.)

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

(A) - (B) (No change.)

(C) Bass: largemouth.

(i) - (ii) (No change.)

(iii) Lakes Bellwood (Smith County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Nacniche (Nacogdoches County), Purts Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) - (II) (No change.)

(iv) Lakes Bright (Williamson County), ~~Brushy Creek (Williamson County),~~ Casa Blanca (Webb County), Cleburne State Park (Johnson County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Meridian State Park (Bosque County), Pflugerville (Travis County), Rusk State Park (Cherokee County), and Welsh (Titus County).

(I) - (II) (No change.)

(v) - (x) (No change.)

(D) - (G) (No change.)

(H) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) - (v) (No change.)

(vi) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) (No change.)

(II) Minimum length limit: No limit [12 inches.]

(III) (No change.)

(vii) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line, Canyon Lake Project #6 (Lubbock County), North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam, and South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(I) - (II) (No change.)

(viii) - (x) (No change.)

(I) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) (No change.)

(II) Minimum length limit: No limit [20 inches.]

(ii) (No change.)

(J) Crappie: black and white crappie their hybrids and subspecies.

(i) - (iii) (No change.)

(iv) Lake Nasworthy (Tom Green County).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) Possession limit is 50.

(K) (No change.)

(L) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) - (III) (No change.)

~~(IV) The provisions of this subparagraph expire on September 1, 2020.~~

(ii) - (iii) (No change.)

(M) - (P) (No change.)

(2) (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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Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §§57.992, 57.993, 57.997

The amendments are proposed under the authority of Parks and Wildlife Code, §47.004, which authorizes the commission to adopt rules governing the issuance and use of a resident fishing guide license, including rules creating separate resident fishing guide licenses for use in saltwater and freshwater.

The proposed amendments affect Parks and Wildlife Code, Chapter 47.

§57.992. Bag, Possession, and Length Limits.

(a) (No change.)

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

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

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) - (D) (No change.)

(E) Flounder: all species (including hybrids and subspecies).

(i) (No change.)

(ii) Minimum length limit: 15 [14] inches.

(iii) (No change.)

(iv) The season for flounder is closed from November 1 through December 14[During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means].

(F) - (N) (No change.)

§57.993. Commercial Harvest Report.

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) Applicable license--a general commercial fishermen's license, a commercial finfish fishermen's license, commercial shrimp boat captain's license, commercial crab fishermen's license, commercial oyster boat captain's license, individual bait dealer's license, or commercial vessel owner's license; [and]

(2) Land--to bring to shore after harvest;

(3) [(2)] Reportable activity--[means]each instance in which an aquatic product taken under an applicable license is landed or transferred to another person[for purposes of sale or processing or holding for eventual sale].

(b) Except for aquatic products transferred to a licensed dealer identified [as provided] in subsection (c) of this section, it is an offense for any person who lands [takes] an aquatic product taken under an applicable license to fail to submit a complete and accurate commercial harvest report to the department by the 10th day of each month following the month in which a reportable activity occurred.

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

(e) A report under this section is not required for aquatic products that are sold by the holder of an applicable license [licensee] to a licensed wholesale or retail fish dealer, bait dealer, or bait shrimp dealer.

§57.997. *Fishing Guide License Requirements.*

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

(d) No person may be issued a Paddle Craft All-Water Guide license unless the person possesses proof that the person has successfully completed:

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

[(3) the "Four Star Leader Sea Kayak" training from the British Canoe Union; or]

(3) [(4)] a paddle craft leading course from the American Canoe Association or another department-approved course ["Coastal Kayak Day Trip Leading"].

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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Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING
PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.3, §65.24

The Texas Parks and Wildlife Department proposes amendments to §65.3 and §65.24, concerning the Statewide Hunting Proclamation. The department is in the process of automating

the application and issuance procedures for pronghorn antelope and antlerless mule deer permits, which has until this point been manual. To do so efficiently and cost-effectively, the department has determined that those processes should first be defined by rule in order to provide a definitive, permanent structure before programming begins.

The proposed amendment to §65.3, concerning Definitions, would add definitions for "herd unit," "buck pronghorn," and "pronghorn." "Herd unit" would be defined as "a discrete geographical area designated by the department for the purpose of population monitoring and permit issuance with respect to pronghorn," which is necessary to create an unambiguous meaning for the basic management context utilized by the department for pronghorn. The proposed amendment also would define "pronghorn" as "pronghorn antelope (*Antilocapra americana*)."¹ Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species; however, the animal is not a true antelope. Additionally, the department believes it is less cumbersome to simply refer to the animal as a pronghorn. Therefore, the definition is necessary to establish that the word "pronghorn" means the pronghorn antelope established by statute as a game animal. The proposed amendment also would define "buck pronghorn" as "a pronghorn with black cheek patches below the ears," which is necessary because certain harvest rules in the subchapter have a narrow application to male pronghorn (bucks), which are distinguishable by their unique markings. Finally, the proposed amendment relocates the definition for "pre-charged pneumatic" in order to preserve the alphabetic order of the section.

The proposed amendment to §65.24, concerning Permits, would set forth the application requirements and conditions for the issuance of pronghorn and antlerless mule deer permits. The proposed amendment would alter subsection (a) to allow for multiple landowners to combine multiple tracts of land to create an aggregate acreage for permit issuance and utilization. By allowing acreages to be combined, the department hopes to increase hunting opportunity and encourage resource management; however, because mule deer are very mobile and can travel substantial distances within their home ranges, the department employs a conservative harvest philosophy for the doe segment of the mule deer population. In order to ensure that harvest is not concentrated to a deleterious extent in one or two areas, the proposed rule would require tracts of land within an aggregate acreage to be contiguous, which is necessary to distribute hunting pressure and harvest across a geographical range. Proposed new subsection (d) would require all permit applications to be submitted electronically and establish application deadlines. The purpose of automation is to relieve staff of burdensome, time-consuming administrative labor, which allows more time that can be devoted to other job duties. Therefore, use of the automated system must be mandatory in order to achieve maximal efficiency. Additionally, deadlines must be established in order to establish smooth workflows.

Proposed new subsection (e) would require landowners who receive permits to maintain a daily harvest log and prescribe the information that must be contained in the daily harvest log (name of hunter, driver's license or customer number, date of kill, location of kill). A daily harvest log is necessary to allow the department to verify that permits are being lawfully utilized.

Finally, the proposed amendment would require landowners to enter harvest data by a deadline following the end of permit va-

lidity. The submitted data is used by the department to inform and guide future management decisions.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Wolf 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 resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

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 impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. 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 rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife 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 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; create a new regulation (the rules governing permit application and issuance); not repeal, expand, or limit 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 Shawn Gray at (432) 837-2051, e-mail: shawn.gray@tpwd.texas.gov. Comments also may be submitted via the department's website at 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 game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (10) (No change.)

~~[(11) Pre-charged pneumatic--An air gun or arrow gun for which the propellant is supplied or introduced by means of a source that is physically separate from the air gun or arrow gun.]~~

~~(11) [(12)] Buck deer--A deer having a hardened antler protruding through the skin.~~

~~(12) Buck pronghorn--A pronghorn with black cheek patches below the ears.~~

(13) - (18) (No change.)

~~(19) Herd unit--A discrete geographical area designated by the department for the purpose of population monitoring and permit issuance with respect to pronghorn.~~

~~(20) [(19)] Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent.~~

~~(21) [(20)] Lawful archery equipment--Longbow, recurved bow, and compound bow.~~

~~(22) [(21)] License year--The period of time for which an annual hunting license is valid.~~

~~(23) [(22)] Muzzleloader--Any firearm that is loaded only through the muzzle.~~

~~(24) [(23)] Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.~~

~~(25) [(24)] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.~~

(26) Pre-charged pneumatic--An air gun or arrow gun for which the propellant is supplied or introduced by means of a source that is physically separate from the air gun or arrow gun.

(27) Pronghorn--A pronghorn antelope (*Antilocapra americana*).

(28) [(25)] Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(29) [(26)] Spike-buck deer--A buck deer with no antler having more than one point.

(30) [(27)] Unbranched antler--An antler having no more than one antler point.

(31) [(28)] Unbranched antlered deer--A buck deer having at least one unbranched antler.

(32) [(29)] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(33) [(30)] Wildlife resources--Alligators, all game animals, and all game birds.

(34) [(31)] Wounded deer--A deer leaving a blood trail.

§65.24. *Permits.*

(a) Except as specifically provided in this subchapter, permits and tags issued under the provisions of this subchapter shall be issued only to the landowner. Multiple landowners may combine multiple tracts of land to create an aggregate acreage for issuance of pronghorn or antlerless mule deer permits; however, tracts of land aggregated for purposes of antlerless mule deer permit issuance must be contiguous.

(b) - (c) (No change)

(d) All applications for issuance of pronghorn permits or antlerless mule deer permits shall be submitted electronically via a department system designated for that purpose on or before the deadline specified in this subsection. The deadline for submission of applications for:

(1) pronghorn permits is July 1; and

(2) antlerless mule deer permits is September 1.

(e) A landowner to whom a pronghorn or antlerless mule deer permit is issued shall maintain a legible daily harvest log on a tract of land for which the permit is issued.

(1) The daily harvest log shall be on a form provided or approved by the department and shall be maintained by the landowner until the last day of permit validity.

(2) A person who kills a pronghorn or antlerless mule deer that is required by a provision of this subchapter to be tagged shall, on the same day that the pronghorn or antlerless mule deer is killed, legibly enter the required information in the daily harvest log.

(A) The daily harvest log shall contain the following information for each pronghorn or antlerless mule deer killed on the enrolled tract of land:

(i) the name and customer or driver's license number of the person who killed the pronghorn or antlerless mule deer;

(ii) the date the pronghorn or antlerless mule deer was killed;

(iii) the location where the pronghorn or antlerless mule deer was killed; and

(iv) the pronghorn or antlerless mule deer permit number of the permit affixed to the pronghorn or antlerless mule deer, as appropriate.

(B) The daily harvest log shall be made available to any department employee acting in the performance of official duties upon request.

(f) A person to whom the department has issued pronghorn or antlerless mule deer permits shall submit a harvest report electronically via a department system designated for that purpose.

(1) For pronghorn, the harvest report shall be submitted by no later than October 31 of the year of permit issuance. The report shall contain the number of buck and/or doe pronghorn killed in addition to any other information required by the department.

(2) For antlerless mule deer, the harvest report shall be submitted by no later than January 15 of the year following the year of permit issuance. The report shall contain the number of antlerless mule deer killed in addition to any other information required by the department.

(g) [(d)] No state-issued permit is required to hunt antlerless white-tailed deer on a National Wildlife Refuge.

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 February 10, 2020.

TRD-202000516

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 389-4775



SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Department proposes amendments to §65.81 and §65.82, concerning Disease Detection and Response. The proposed amendments are intended to replace emergency rules affecting Subchapter B, Division 1, which were published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 243), as well as to respond to another detection of CWD in Medina County.

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and it is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD is confirmed, within which the possession and movement of live deer under department permits is restricted, and harvested deer are required to be presented at check stations to be tested for CWD. In 2016, those rules were modified (41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional Surveillance Zones (SZs) and an additional Containment Zone (CZ) in West Texas. The rules were amended again in 2017 in response to a subsequent positive test result in Medina County.

On December 18, 2019, the department received confirmation that a 5.5 year-old female white-tailed deer killed in Val Verde County had tested positive for CWD. Accordingly, the department adopted rules on an emergency basis to create a CZ and an SZ in Val Verde County. This proposed rulemaking would replace the emergency rule, which has a limited duration by law, with permanent rules.

On January 28, 2020, the department received confirmation that a 4.5-year-old male white-tailed deer and a 3.5-year-old female white-tailed deer killed in Medina County had tested positive for CWD. The location of the mortalities necessitates a conforming change to the boundaries of current CZ 3.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would create new CZ 4 in a portion of Val Verde County and slightly expand current CZ 3 in Medina and Uvalde counties. A CZ is a specific location in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable. With respect to the CZ that would be established by this rulemaking, the department determined that for any given location at which CWD has been detected in a free-ranging white-tailed deer, the highest probability of detection would be within approximately a five-mile radius from the approximate location where the deer was harvested. Although the CZ designation imposes mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer, it is not necessary for hunters to be aware of or concerned with CZ boundaries, since the CZ is wholly within an SZ where mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer also apply.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would create new SZ 4 in a portion of Val Verde County surrounding proposed new CZ 4. An SZ is a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. In this case, the SZ represents an approximately 15-mile buffer around CZ 4, within which the movement of live deer is re-

stricted and presentation of harvested deer at department check stations is mandatory. The boundaries of proposed new CZ 4 have been tailored to as much as possible follow recognizable features such as roadways and power line rights-of-way, and the department notes that any designation of a CZ or SZ is always accompanied by a robust public awareness effort.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Wolf also has determined that for each of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be no adverse economic impact 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 and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The 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. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional record-keeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that because the proposed rules affecting Val Verde County will not result in any direct economic effect on any small businesses, micro-businesses, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

Although there is one deer breeder facility that would be included within the altered CZ in Medina and Uvalde counties created by the proposed amendment, that facility contains no deer and cannot accept new deer because it has been designated non-movement qualified (NMQ) under the provisions of Subdivision 2 of this subchapter. Therefore, the portion of the proposed amendment to §65.81 that affects Medina and Uvalde counties also will not result in any direct economic effect on any small businesses, micro-businesses, or rural communities.

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 result in direct impacts to 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 new rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not 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; will not result in an increase or decrease in the number of full-time equivalent employee needs; will not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; will expand an existing regulation (by creating new areas subject to the rules governing CZs and SZs), but will otherwise not limit or repeal an existing regulation; will neither increase nor decrease the number of individuals subject to regulation; and will not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 792-9677 (e-mail: mitch.lockwood@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.81. *Containment Zones; Restrictions.*

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) - (B) (No change.)

(C) Containment Zone 3 is that portion of the state lying within the area designated as Containment Zone 3 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.29398096800, 29.63444908360; -99.29332773120, 29.63427752770; -99.29197515170, 29.63439690090; -99.28980120500, 29.63446380410; -99.28762690610, 29.63440631430; -99.28546157340,

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Figure: 31 TAC §65.81(1)(C)
 [Figure: 31 TAC §65.81(1)(C)]

(D) Containment Zone 4: That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.

(E) [(D)] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. *Surveillance Zones; Restrictions.*

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

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

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E) [(D)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (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 February 10, 2020.

TRD-202000517

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 389-4775



SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks

and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

The proposed amendments would specify the season dates and bag limits for the 2020-2021 migratory game bird seasons. The remainder of the amendments, with the exceptions addressed later in this preamble, would retain the season structures and bag limits for all migratory game birds from last year and serve only to adjust the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The exceptions are as follows.

The proposed amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, will reduce the bag limit for scaup from three to one in compliance with the federal frameworks. The commission cannot modify or alter the mandates of the federal frameworks.

The proposed amendment to §65.316, concerning Geese, would open the light and dark goose seasons in the Western Zone one week later than has been the case in the past and reduce the daily bag limit for light geese in both goose zones from 20 birds to 10 birds. The department has noticed a gradual shift in migration chronology in that part of the state, characterized by the later arrival of large numbers of geese in the Western Zone and believes that moving the opening date will result in greater hunter opportunity. The proposed amendment also necessitates a conforming change to the traditional opening day of the Light Goose Conservation Order as well. The bag limit reduction is necessitated by continuing concerns about long-term declines in wintering populations of light geese, especially along the Texas coast. Department data indicate that populations of wintering light geese in Texas have declined by over 50% since 1970, and although a variety of factors are believed to be responsible, primarily habitat loss, the department believes that a reduction in the daily bag limit is warranted.

The proposed amendment to §65.319, concerning Gallinules, Rails, Snipe, and Woodcock, would open the season for snipe two weeks later than in years past. Hunter survey data indicate a preference for a later season, and the department does not believe that moving the opening date to a later time will result in negative population impacts.

Clayton Wolf, Wildlife Division Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Wolf also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

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 ad-

verse economic impact on small and micro-businesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. 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 rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird 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.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

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 rule 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, but replace existing regulations; not expand or limit an existing regulation, but will replace existing regulations; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Shaun Oldenburger (Small Game/ Bird Program Director) at (512) 389-4778, e-mail: shaun.oldenburger@tpwd.texas.gov. or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. *Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves).*

- (a) (No change.)
- (b) Seasons; Daily Bag Limits.
 - (1) North Zone.

(A) Dates: September 1 - November 12, 2020 and December 18, 2020 - January 3, 2021 [September 1 - November 12, 2019 and December 20, 2019 - January 5, 2020].

(B) (No change.)

(2) Central Zone.

(A) Dates: September 1 - November 1, 2020 and December 18, 2020 - January 14, 2021 [September 1 - November 3, 2019 and December 20, 2019 - January 14, 2020].

(B) (No change.)

(3) South Zone and Special White-winged Dove Area.

(A) Dates: September 5, 6, 12, and 13, 2020; September 14 - November 1, 2020; and December 18, 2020 - January 23, 2021 [September 1, 2, 7, and 8, 2019; September 14 - November 3, 2019; and December 20, 2019 - January 23, 2020].

(B) Daily bag limit:

(i) on September 5, 6, 12, and 13, 2020 [September 1, 2, 7, and 8, 2019]; 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped (white-fronted) doves per day.

(ii) from September 14 - November 1, 2020; and December 18, 2020 - January 23, 2021 [September 14 - November 3, 2019 and December 20, 2019 - January 23, 2020]; 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped (white-fronted) doves per day.

§65.315. *Ducks, Coots, Mergansers, and Teal.*

(a) (No change.)

(b) Season dates and bag limits.

(1) HPMMU.

(A) For all species other than "dusky ducks": October 31 - November 1, 2020 and November 6, 2020 - January 31, 2021 [October 26 - 27, 2019 and November 1, 2019 - January 26, 2020]; and

(B) "dusky ducks": November 9, 2020 - January 31, 2021 [November 4, 2019 - January 26, 2020].

(2) North Zone.

(A) For all species other than "dusky ducks": November 14 - 29, 2020 and December 5, 2020 - January 31, 2021 [November 9 - December 1, 2019 and December 7, 2019 - January 26, 2020]; and

(B) "dusky ducks": November 19 - 29, 2020 and December 5, 2020 - January 31, 2021 [November 14 - December 1, 2019 and December 7, 2019 - January 26, 2020].

(3) South Zone.

(A) For all species other than "dusky ducks": November 7 - 29, 2020 and December 12, 2020 - January 31, 2021 [November 2 - December 1, 2019 and December 14, 2019 - January 26, 2020]; and

(B) "dusky ducks": November 12 - 29, 2020 and December 12, 2020 - January 31, 2021 [November 7 - December 1, 2019 and December 14, 2019 - January 26, 2020].

(4) September teal-only season.

(A) During the September teal-only special season, the season is closed for all species of ducks other than teal ducks (blue-winged, green-winged, and cinnamon).

(B) Dates: September 12-27, 2020 [~~14 - 29, 2019~~].

(c) Bag limits.

(1) The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; one [~~three~~] scaup (lesser scaup or [~~and~~] greater scaup [~~in the aggregate~~]); two redheads; two canvasbacks; one pintail; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established for those species in this section. For all species not listed, the daily bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(2) (No change.)

§65.316. *Geese.*

(a) (No change.)

(b) Season dates and bag limits.

(1) Western Zone.

(A) Light geese: November 14, 2020 - February 14, 2021 [~~November 2, 2019 - February 2, 2020~~]. The daily bag limit for light geese is 10 [~~20~~], and there is no possession limit.

(B) Dark geese: November 14, 2020 - February 14, 2021 [~~November 2, 2019 - February 2, 2020~~]. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(2) Eastern Zone.

(A) Light geese: November 7, 2020 - January 31, 2021 [~~November 2, 2019 - January 26, 2020~~]. The daily bag limit for light geese is 10 [~~20~~], and there is no possession limit.

(B) Dark geese:

(i) Season: November 7, 2020 - January 31, 2021 [~~November 2, 2019 - January 26, 2020~~];

(ii) (No change.)

(c) September Canada goose season. Canada geese may be hunted in the Eastern Zone during the season established by this subsection. The season is closed for all other species of geese during the season established by this subsection.

(1) Season dates: September 12 - 27, 2020 [~~September 14 - 29, 2019~~].

(2) (No change.)

(d) Light Goose Conservation Order. The provisions of paragraphs (1) - (3) of this subsection apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

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

(4) Season dates.

(A) From February 1 - March 14, 2021 [~~January 27 - March 15, 2020~~], the take of light geese is lawful in the Eastern Zone.

(B) From February 15 - March 14, 2021 [~~February 3 - March 15, 2020~~], the take of light geese is lawful in the Western Zone.

§65.317. *Special Youth-Only Waterfowl Season.*

There shall be a Special Youth-Only Season for waterfowl, during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 16 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this title (relating to Extended Falconry Seasons).

(1) HPMMU:

(A) season dates: October 24 - 25, 2020 [~~October 19 - 20, 2019~~];

(B) (No change.)

(2) North Duck Zone:

(A) season dates: November 7 - 8, 2020 [~~November 2 - 3, 2019~~];

(B) (No change.)

(3) South Duck Zone:

(A) season dates: Special youth-only season: October 31 - November 1, 2020 [~~October 26 - 27, 2019~~];

(B) (No change.)

§65.318. *Sandhill Crane.*

(a) (No change.)

(b) Season dates and bag limits.

(1) Zone A: October 31, 2020 - January 31, 2021 [~~October 26, 2019 - January 26, 2020~~]. The daily bag limit is three.

(2) Zone B: November 27, 2020 - January 31, 2021 [~~November 22, 2019 - January 26, 2020~~]. The daily bag limit is three.

(3) Zone C: December 19, 2020 - January 24, 2021 [~~December 14, 2019 - January 19, 2020~~]. The daily bag limit is two.

§65.319. *Gallinules, Rails, Snipe, Woodcock.*

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county during the season established in this subsection.

(1) Season dates: September 12 - 27 and November 7 - December 30, 2020 [~~September 14 - 29, 2019 and November 2 - December 25, 2019~~].

(2) (No change.)

(b) Rails may be taken in any county in this state during the season established by this subsection.

(1) Season dates: September 12 - 27 and November 7 - December 30, 2020 [~~September 14 - 29, 2019 and November 2 - December 25, 2019~~].

(2) (No change.)

(c) Snipe may be taken in any county of the state during the season established by this subsection.

(1) Season dates: November 7, 2020 - February 21, 2021 [~~October 26, 2019 - February 9, 2020~~].

(2) (No change.)

(d) Woodcock may be taken in any county of the state during the season established by this subsection.

(1) Season dates: December 18, 2020 - January 31, 2021 [~~December 18, 2019 - January 31, 2020~~].

(2) (No change.)

§65.320. *Extended Falconry Seasons.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the seasons established by this section.

(1) Mourning doves, white-winged doves and white-tipped doves: November 20 - December 6, 2020 [~~November 16 - December 2, 2019~~].

(2) Duck, gallinule, moorhen, rail, and woodcock: February 1 - February 15, 2021 [~~January 27 - February 9, 2020~~].

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

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

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TRD-202000518

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 2. STATEWIDE PROCUREMENT DIVISION [STATE SUPPORT] SERVICES - TRAVEL AND VEHICLES

34 TAC §20.407, §20.408

The Comptroller of Public Accounts proposes amendments to §20.407, concerning Definitions, and §20.408, concerning Exceptions to the Use of Contract Travel Services. The comptroller also proposes to change the title of Subchapter E, Special Categories of Contracting, Division 2, from State Support Services - Travel and Vehicles to Statewide Procurement Division Services - Travel and Vehicles.

The amendments are proposed to clarify documentation requirements for state employees' use of travel services other than contract travel services.

The amendments to §20.407 add a definition of "overall cost of travel" that includes a number of elements that contribute to costs of employee travel.

The amendments to §20.408 clarify, in subsection (a), that state agencies may reimburse their employees for travel services other than contract travel services only if one or more specified exceptions apply; clarify, in subsection (b), the exception for lower overall cost of travel, which requires documentation and

must be based on a consistent cost comparison methodology; clarify, in subsection (h), the scope of the emergency response exception; and require, in new subsection (j), documentation of necessity whenever an agency reimburses lodging costs at a rate that exceeds the maximum set in the regulations issued by the United States General Services Administration for a particular location, mirroring the requirement in General Appropriations Act (House Bill 1, 2019), Article IX, §5.05(a)(2). The title of §20.408 is amended to indicate that this section addresses requirements for higher cost of travel.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the clarity and implementation of the rules. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

Comments on the amendments may be submitted to Sarah Chacko at P.O. Box 13186 Austin, Texas 78711-3186 or Sarah.Chacko@cpa.texas.gov. 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 Government Code, §§403.011, which outlines the general powers of the comptroller, 572.051, which requires each state agency to adopt a written ethics policy, and 660.021, which authorizes the comptroller to adopt rules to efficiently and effectively administer this chapter related to state employee travel costs.

These amendments affect Government Code, §660.07.

§20.407. Definitions.

The following words and terms used in this division are defined as follows unless the context clearly indicates otherwise.

(1) Contractor--An individual or entity under contract with comptroller for the provision of travel services.

(2) Contract travel services--The travel services provided pursuant to comptroller contracts that guarantee prices and levels of services for all eligible entities and individuals.

(3) Force majeure event--Any acts of god, war, riot, strike, or other event beyond the control of a contractor and that could not reasonably have been anticipated or avoided and which, by the exercise of all reasonable due diligence, such contractor is unable to overcome.

(4) Official government business--Business required in the scope and course of the traveler's employment that is properly authorized by the employing governmental entity.

(5) Overall cost of travel--May include the actual costs to the state for travel, including flight or other mode of transport to the duty station, mileage, rental car, taxi, parking, tolls, lodging, meals in amounts less than or equal to the allowed per diem, and in some instances may also include travel time to duty station or other relevant

factors directly related to the travel that are significant in the context of the overall cost of the travel event.

(6) [(5)] State agency--Any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by statute that is required to use contract travel services pursuant to Government Code, §2171.055.

(7) [(6)] State employee--Any person employed by a state agency, or an elected or appointed official.

(8) [(7)] State travel credit card--A credit card issued to an individual or a governmental entity by a contract travel credit card contractor.

(9) [(8)] State travel directory--A comptroller publication that lists current available contract travel services.

(10) [(9)] Traveler--Any person eligible to use contract travel services, including those eligible pursuant to the comptroller's travel allowance guide.

§20.408. Exceptions to the Use of Contract Travel Services and Higher Cost of Travel.

(a) Exceptions to use of contract travel services. In accordance with these rules and applicable statutes, state agencies may allow their employees to use travel services other than contract travel services only if one or more of the exceptions in subsections (b) through (i) of this section apply. [This section provides exceptions to use of contract travel services. These exceptions apply to the use of any contract travel services. When travel services are obtained at a lower total cost than the cost of contract travel services, no reporting of exceptions is required. Exceptions must be documented only when the total cost is greater than contract travel services rates.] Nothing in this section affects or alters the authority of the comptroller regarding travel reimbursement or audit of travel transactions [agreements].

(b) Lower overall cost of travel. The state agency obtains lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel. When a state agency uses any travel services obtained at a lower overall cost than the contract travel services price, the exception must be documented by the agency. The agency should document and follow a consistent cost comparison methodology. [Lower cost to the state. State agencies may use any travel services obtained at a price lower than the contract travel services price. State agencies are encouraged to obtain lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel.]

(c) Unavailability of contract travel services. The contract travel services are not available during the time or at the location necessary for the business purpose; or the contract travel service does not provide for the service required; or because the contractor is unable to provide the contract services due to a force majeure event.

(d) Special needs. The traveler's health, safety, physical condition, or disability requires accommodations, including medical emergency or other necessary services, not available from contract travel service contractors.

(e) Custodians of persons. The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from contract travel service contractors.

(f) In travel status. The traveler is in the course of travel and changes in scheduling render the use of contract travel services impractical or the appropriate travel services are not available. The traveler

shall make reasonable efforts to secure rates equal to or lower than the contract travel service rates.

(g) Group program. The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.

(h) Emergency response. The traveler is responding to a public health or safety emergency situation and the use of contract travel services is not available or would result in an unacceptable delay.

(i) Legally required attendance. The traveler is required by a court, administrative tribunal, or other entity to appear at a particular time and place without sufficient notice to obtain contract travel services.

(j) Lodging reimbursement exceeding general services administration rates. If a state agency reimburses lodging at a rate exceeding the maximum set in the regulations issued by the United States General Services Administration for a particular location, the agency must document its determination that local conditions necessitate the higher rate for that location.

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 February 10, 2020.

TRD-202000475

Don Neal

Chief Counsel, Operations and Support Legal Services Division

Comptroller of Public Accounts

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter B. General Management, §809.15 and §809.20

Subchapter D. Parent Rights and Responsibilities, §809.71

Subchapter E. Requirements to Provide Child Care, §§809.91, 809.93, and 809.94

Subchapter G. Texas Rising Star Program, §809.132

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 781, 86th Texas Legislature, Regular Session (2019), amended §42.071 of the Human Resources Code to discontinue evaluation as a corrective action for the Texas Health and Human Services Commission's (HHSC) Child Care Licensing (CCL) staff to impose on a licensed child care facility or family home. Effective September 1, 2019, CCL will either recommend a voluntary plan of action or place a facility on probation as corrective action when needed.

The amendments to TWC Chapter 809 Child Care Services rules remove references to evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as amended by SB 781.

Additionally, House Bill (HB) 5, 85th Texas Legislature, Regular Session (2017), reorganized several functions within the HHSC umbrella. Included in this reorganization was the transfer of CCL from the Texas Department of Family and Protective Services (DFPS) to HHSC. These rule amendments change references throughout Chapter 809 to reflect the transfer of CCL from DFPS to HHSC.

Finally, §658E(c)(4) of the Child Care and Development Block Grant Act (2014) and 45 Code of Federal Regulations (CFR) §98.45 require state Child Care and Development Fund (CCDF) lead agencies to conduct a market rate survey (MRS) of child care rates and to use market rate data to set direct care reimbursement rates. States must ensure equal access to child care services for children participating in child care subsidies by setting direct care reimbursement rates that are sufficient to provide comparable services to those received by families that do not receive assistance.

As the CCDF lead agency for Texas, TWC conducts an annual MRS to analyze and summarize child care market rate data for the state and for the 28 Local Workforce Development Boards (Boards). Section 809.20, Maximum Provider Reimbursement Rates, authorizes Boards to set reimbursement rates for their local workforce development areas (workforce areas) based on local factors, including the MRS, and to ensure that the rates provide equal access to child care.

The US Department of Health and Human Services Office of Inspector General (OIG) recently released a report--*States' Payment Rates Under the Child Care and Development Fund Program Could Limit Access to Child Care Providers*--in which OIG found that many states were not setting their child care reimbursement rates at a level sufficient to ensure that eligible children have equal access to child care services that are comparable to services available to children whose parents are not eligible to receive child care assistance. OIG recommended that Office of Child Care (OCC) evaluate whether states are ensuring equal access for families in the CCDF program, as required by statute.

OCC concurred with OIG's recommendation and prioritized review of equal access requirements in its review of CCDF State Plans. Based on the review, OCC placed 33 states on Corrective Action Plans (CAPs) for not achieving equal access requirements, with 21 of those based specifically on inadequate rates.

OCC notified states at the 2019 State and Territories Administrators Meeting that CAPs were implemented for states whose rates were at or below the 25th percentile of the market rate, as determined by a statistically valid MRS. OCC also notified states that it would be reevaluating the 25th percentile "floor" on an ongoing basis, and states can expect OCC to raise the floor over time to improve equal access to child care services.

Based on OCC's actions to place states on CAPs for equal access if they fail to meet a minimum floor for their rates, on September 24, 2019, TWC's three-member Commission (Commission) took action to ensure that Boards' maximum reimbursement rates are set at a level adequate to ensure equal access as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access. Specifically, the Commission directed staff to develop guidance--subsequently issued through Workforce

Development Letter 23-19, issued on October 15, 2019, and titled "Child Care Provider Maximum Reimbursement Rate Increases"--requiring Boards to set their maximum reimbursement rate at or above the 30th percentile of the 2019 MRS, in compliance with §809.20(a), which requires that rates provide equal access to child care.

Section 809.20 authorizes Boards to establish maximum provider reimbursement rates and to ensure that the rates provide equal access to child care. To further support the federal requirement of equal access, §809.20 is amended to require Boards to establish maximum reimbursement rates at or above a level established by the Commission.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B:

§809.15. Promoting Consumer Education

Section 809.15 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(a) is amended to require Boards to establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission. The purpose of the rule amendment is to ensure that Boards' maximum reimbursement rates are set at a level adequate to enable equal access to subsidized child care services as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.

Section 809.20 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC proposes the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC proposes the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

Section 809.91 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.93. Provider Reimbursement

Section 809.93 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

Section 809.94 is amended to remove references to evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as amended by SB 781. Specifically, §809.94(a), regarding providers placed on evaluation by CCL, is removed and subsequent subsections are relettered accordingly.

Section 809.94 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

§809.132. Impact of Certain Deficiencies on TRS Certification

Section 809.132 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas Legislature, Regular Session (2017)--to be codified at Texas Government Code §2001.0045--does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to:

--ensure that Boards' maximum reimbursement rates are set at a level adequate to enable equal access to subsidized child care services as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access;

--remove references to evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as amended by SB 781; and

--change references throughout Chapter 809 to reflect the transfer of CCL from DFPS to HHSC.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years that the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Division of Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that Boards' maximum child care reimbursement rates are set at a level adequate to enable equal access to subsidized child care services as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC

provided the concept paper regarding these rule amendments to the Boards for consideration and review on October 30, 2019. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §809.15, §809.20

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.15. *Promoting Consumer Education.*

(a) A Board shall promote informed child care choices by providing consumer education information to:

- (1) parents who are eligible for child care services;
- (2) parents who are placed on a Board's waiting list;
- (3) parents who are no longer eligible for child care services; and
- (4) applicants who are not eligible for child care services.

(b) The consumer education information, including consumer education information provided through a Board's website, shall contain, at a minimum:

(1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;

(2) the website and telephone number of CCL [DFPS] so parents may obtain health and safety requirements including information on:

- (A) the prevention and control of infectious diseases (including immunizations);
- (B) building and physical premises safety;
- (C) minimum health and safety training appropriate to the provider setting; and
- (D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.91; and

(4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

(A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code §2308.315; and

(B) integrated school readiness models, pursuant to Texas Education Code §29.160;

(5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171;

(6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

(A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 USC [U.S.C.] 1396 et seq.; and

(B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 USC [U.S.C.] 1419, 1431 et seq.; and

(7) a link to the Agency's designated child care consumer education website.

(c) A Board shall cooperate with [~~the Texas Health and Human Services Commission (HHSC)] to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.~~

§809.20. *Maximum Provider Reimbursement Rates.*

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(f), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCL [DFPS];

(B) Licensed child care homes as defined by CCL [DFPS];

(C) Registered child care homes as defined by CCL [DFPS]; and

(D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School-age [School age] children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at TRS provider facilities; and

(2) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

(1) 5 percent greater for a:

- (A) 2-Star Program Provider; or
- (B) child care provider meeting the requirements of subsection (b)(2) of this section;
- (2) 7 percent greater for a 3-Star Program Provider; and
- (3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established 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.

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

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 Jason Vaden
 Director, Workforce Program Policy
 Texas Workforce Commission
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 For further information, please call: (512) 689-9855



SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §809.71

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parent Rights.

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;

(4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification at least 15 calendar days before termination of child care services;

(10) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

(11) be informed of the possible consequences of rejecting or ending the child care that is offered;

(12) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

(13) be informed of the parent appeal rights described in §809.74;

(14) be informed of required background and criminal history checks for relative child care providers through the listing process with CCL [~~DFPS~~,] as described in §809.91(e)[;] before the parent or guardian selects the relative child care provider;

(15) receive written notification pursuant to §809.78(d) of the possible termination of child care services for excessive absences, as described in §809.78(a)(1); and

(16) receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to §809.19(d).

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

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91, 809.93, 809.94

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. *Minimum Requirements for Providers.*

(a) A Board shall ensure that child care subsidies are paid only to:

- (1) regulated child care providers as described in §809.2;
- (2) relative child care providers as described in §809.2, subject to the requirements in subsection (e) of this section; or
- (3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) A Board shall not prohibit a relative child care provider who is listed with CCL [DFPS] and who meets the minimum requirements of this section from being an eligible relative child care provider.

(c) Except as provided by the criteria for TRS Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

- (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
- (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with CCL [DFPS]; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with CCL [DFPS] shall be exempt from the health and safety requirements of 45 CFR §98.41(a).

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2, and his or her siblings;

(B) A child under 18 months of age, and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

§809.93. *Provider Reimbursement.*

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent as described in §809.51(d).

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCL [DFPS] minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open.

(h) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(i) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (f) of this section.

§809.94. *Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services.*

~~[(a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:]~~

~~[(1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and]~~

~~[(2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.]~~

~~(a) [(b)] For a provider placed on probation corrective action (probationary status) by CCL [DFPS], Boards shall ensure that:~~

~~(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCL's [DFPS'] decision to place the provider on probationary status; and~~

~~(2) no new referrals are made to the provider while on probationary status.~~

~~(b) [(e)] A parent receiving notification of a provider's [evaluation or] probationary status with CCL [DFPS] pursuant to subsection [subsections] (a) [and (b)] of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3) if the parent requests the transfer within 14 calendar days of receiving such notification.~~

~~(c) [(d)] For a provider placed on [evaluation or] probationary status by CCL [DFPS], Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on [evaluation or] probationary status.~~

~~(d) [(e)] For a provider against whom CCL [DFPS] is taking adverse action, Boards shall ensure that:~~

~~(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCL [DFPS] intends to take adverse action against the provider;~~

~~(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCL [DFPS] intends to take adverse action against the provider; and~~

~~(3) no new referrals for Commission-funded child care are made to the provider while CCL [DFPS] is taking adverse action.~~

~~(e) [(f)] For adverse actions in which CCL [DFPS] has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns CCL's [DFPS'] determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (d) [(e)] of this section.~~

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

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

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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: March 22, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §809.132

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.132. *Impact of Certain Deficiencies on TRS Certification.*

(a) A TRS provider shall lose TRS certification if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);

(3) is placed on corrective or adverse action by CCL; or

(4) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

(b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month CCL licensing history shall have the following consequences:

(1) reduction of one-star level, so a 4-Star Program Provider is reduced to a 3-Star Program Provider, a 3-Star Program Provider is reduced to a 2-Star Program Provider; or

(2) a 2-Star Program Provider loses certification.

(c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month CCL licensing history shall lose a star level with a 2-Star Program Provider losing certification.

(d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month CCL licensing history shall be placed on a six-month TRS program probationary period. Further:

(1) TRS providers on a six-month probationary period that are re-cited by CCL within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;

(2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the first probationary period, a second six-month probationary period shall be established effective upon the date of final CCL [DFPS] determination of the deficiencies; and

(3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the second six-month probationary period, a provider shall lose TRS certification.

(e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in §809.132(b) - (d) occur within the six-month reduction time frame.

(f) Providers losing TRS certification shall be eligible to reapply for certification after six months following the loss of the certification, as long as no current deficiencies are re-cited and no additional licensing deficiencies are cited during the disqualification period.

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) 689-9855



CHAPTER 857. PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES BY TEXAS WORKFORCE COMMISSION

40 TAC §857.1

The Texas Workforce Commission (TWC) proposes the repeal of Chapter 857 in its entirety, relating to the Purchase of Goods and Services for Vocational Rehabilitation Services by Texas Workforce Commission.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed chapter repeal is to streamline TWC rules by incorporating the relevant portions of this chapter into Chapter 858, Vocational Rehabilitation Services Contract Management, which is being amended and renamed in a separate proposed rulemaking.

Effective September 1, 2016, pursuant to Texas Labor Code §351.002, the administration of vocational rehabilitation (VR) services was transferred from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC. To ensure continuity and avoid any impact on customers, the administrative rules shared by all DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of the programs. Because the rules established DARS' administrative framework and served all DARS programs, they overlap certain existing TWC administrative rules and contain numerous references to programs that were not transferred to TWC.

Chapter 857 consists of one section, §857.1, which authorizes the use of open-enrollment solicitation and interagency contract-

ing, in addition to other noncompetitive procurement methods. To streamline TWC rules and preserve the relevant subsections of §857.1, the chapter should be repealed and its relevant content should be amended and moved to Chapter 858, which will be renamed "Vocational Rehabilitation Purchases and Contracts" to reflect the additional content.

PART II. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the repeal is in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of the repeal.

There are no estimated cost reductions to the state and to local governments as a result of the repeal.

There are no estimated losses or increases in revenue to the state or to local governments as a result of the repeal.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of the repeal.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-member Commission to adopt rules necessary to integrate the vocational rehabilitation programs, including recommending adopting rules to implement the integration. Therefore, the exception identified in §2001.0045(c)(9) also applies.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I; or an action that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect with the market value of the property as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to streamline TWC rules by incorporating the relevant portions of Chapter 857 into Chapter 858, Vocational Rehabilitation Services Contract Management, which is being amended and renamed in a separate proposed rulemaking.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking ac-

tion will not affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposed rule-making also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed repeal will be in effect:

- the proposed repeal will not create or eliminate a government program;
- implementation of the proposed repeal will not require the creation or elimination of employee positions;
- implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to TWC;
- the proposed repeal will not require an increase or decrease in fees paid to TWC;
- the proposed repeal will not create a new regulation;
- the proposed repeal will not expand, limit, or eliminate an existing regulation;
- the proposed repeal will not change the number of individuals subject to the rules; and
- the proposed repeal will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed repeal will not have an adverse economic impact on small businesses or rural communities, as the proposed repeal places no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the repeal is in effect, the public benefit will be to streamline TWC rules.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of the 28 Local Workforce Development Boards (Boards) in Texas. TWC provided the concept paper regarding the repeal to the Boards for consideration and review on June 14, 2018. TWC also conducted a conference call with Board executive directors and Board staff on June 22, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed repeal may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 351 and 352.

§857.1. Noncompetitive Procurement.

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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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES [CONTRACT MANAGEMENT REQUIREMENT]

SUBCHAPTER D. VOCATIONAL REHABILITATION SERVICES CONTRACT MANAGEMENT REQUIREMENT

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement:

§858.1 and §858.2

TWC proposes amendments to the following sections of Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement:

§§858.3, 858.4, and 858.7 - 858.16

TWC proposes the repeal of the following sections of Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement:

§§858.1, 858.2, 858.5, and 858.6

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 858 rule change is to align the chapter with TWC's operation of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002 transferred the administration of VR services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC, effective September 1, 2016.

To ensure continuity and avoid any impact on customers, the administrative rules shared by all DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of the programs. Because the rules established DARS' adminis-

trative framework and served all DARS programs, they overlap certain existing TWC administrative rules and contain references to programs that were not transferred to TWC.

To streamline TWC rules and accurately reflect TWC's program administration, several amendments are needed to integrate and align overlapping sections and update outdated terms and procedures to align with TWC's current program operation. This will help to ensure the health and safety of VR customers, as well as help to ensure that Texans receive the best value for the expenditure of available public funds for VR services.

In keeping with the goal of protecting the health and safety of VR customers and ensuring that Texas receives the best value for the expenditure of available public funds for VR services, TWC understands that the VR services program is a recognized health and human services entity and the express authority for procuring goods and services through a noncompetitive process, referred to as an enrollment contract, transferred to TWC with the VR services function. The definition of an enrollment contract is found in Texas Administrative Code (TAC) 1 TAC §391.103(8).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

TWC proposes the following amendments to Chapter 858:

§858.1. Purpose and Applicability

Section 858.1 is repealed because the language on purpose and applicability is unnecessary and inconsistent with TWC's current rulemaking framework.

§858.1. Definitions

New §858.1 updates and retains the applicable definitions from §858.2, which is currently proposed for repeal, to reflect TWC's current operation of the VR program.

§858.2. Definitions

Section 858.2 is repealed to accommodate reorganization of the subchapter.

§858.2. Noncompetitive Open Enrollment Solicitation

New §858.2 adds new language from the proposed repeal of Chapter 857, that authorizes the use of open enrollment solicitations.

§858.3. General Requirements for Contracting

Section 858.3 is amended to remove, update, combine, or add language and provisions accounted for in the standard terms and conditions of VR services contracts, the VR Standards for Providers on TWC's website, and TWC's contracting policies and procedures.

§858.4. Complaints

Section 858.4 is amended to add language specifying that TWC is the administrative agency for directing complaints and requiring contractors to verify that the information they provide to customers for directing complaints is current and accurate.

§858.5. Record Requirements

Section 858.5 is repealed; retention and production of contractor records is required and covered by TWC's Financial Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.

§858.6. Access to Contractor Facilities and Records

Section 858.6 is repealed. Access to contractor records is required and covered by the Financial Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.

§858.7. Contract Monitoring

Section 858.7 is amended to update terminology and to highlight contractor responsibility regarding the monitoring and review of contracts under this chapter.

§858.8. Corrective Action Plan

Section 858.8 is amended to update terminology and to highlight contractor responsibility regarding a corrective action plan. Language has been added to require that the corrective action plan be acceptable to TWC and that contractors remedy all deficiencies or violations in a timely manner.

§858.9. Adverse Actions

Section 858.9 is amended to update terminology and to add language that includes substantiated claims of fraud against a contractor and failure to submit a corrective action plan as reasons for which TWC may impose adverse actions against a contractor. Language has been modified for clarity and consistency and to reflect TWC's current operation of the VR services program.

§858.10. Debarment and Suspension of Contractors

Section 858.10 is amended to update terminology and clarify the general length of debarment. Subsection (d) has been modified to clarify when TWC may suspend contracts.

§858.11. Causes and Conditions of Debarment

Section 858.11 is amended to remove language stating that paragraph (3)(B) applies only to actions occurring after the effective date of these rules. Additionally, language has been updated for clarity and consistency with existing contract language and to reflect TWC's current operation of the VR services program.

§858.12. Causes and Results of Suspension

Section 858.12(b) is amended to update terminology and to clarify the possible results of suspension. Additionally, language has been updated to reflect TWC's current operation of the VR services program.

§858.13. Evidence for Debarment

Section 858.13 is amended to update terminology to reflect TWC's current operation of the VR services program.

§858.14. Notice for Debarment or Suspension

Section 858.14 is amended to update terminology to reflect TWC's current operation of the VR services program.

§858.15. Appeals

Section 858.15(b) is amended to update terminology and to clarify that a notice of adverse action rendered by TWC is final for all purposes unless the contractor files an appeal not later than 28 calendar days after the date the initial adverse action is sent to the contractor. Additionally, language has been added giving TWC the discretion to grant a contractor's request for an extension of the period in which to file a notice of appeal of an adverse action upon showing of good cause. The term "appellant" has been replaced with the term "contractor."

§858.16. Request for Reconsideration

Section 858.16 is amended to update terminology and be consistent with changes in §858.15. The term "appellant" has been replaced with the term "contractor."

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth by Texas Government Code §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-member Commission (Commission) to adopt rules necessary to integrate the VR programs, including recommending adopting rules to implement the integration. Therefore, the exception identified in §2001.0045(c)(9) also applies.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I; or an action that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect with the market value of the property as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align Chapter 858 with TWC's operation of the VR services program.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposed rulemaking also will not affect private real property in a manner that restricts or limits an owner's right to the property that would other-

wise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to update outdated terms and procedures to align with TWC's current VR services program operation; to ensure the health and safety of VR customers; and to help ensure that Texans receive the best value for the expenditure of available public funds for VR services.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of the 28 Local Workforce Development Boards (Boards) in Texas. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on June 14, 2018. TWC also conducted a conference call with Board executive directors and Board staff on June 22, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas

78778; faxed to (512) 475-3577; or emailed to TWCPolicy-Comments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

40 TAC §858.1, §858.2

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

§858.1. *Purpose and Applicability.*

§858.2. *Definitions.*

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 February 7, 2020.

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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



40 TAC §§858.1 - 858.4

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

§858.1. *Definitions.*

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Amendment--A formal revision or addition to a contract.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Contract--A written agreement between the Agency and a contractor by the terms of which the contractor agrees to provide goods or services, by sale or lease to or for the Agency for Vocational Rehabilitation (VR) customers.

(4) Contract records--All financial and programmatic records, supporting documents, papers, statistical data, or any other written or electronic materials that are pertinent to each specific contract instrument.

(5) Contractor--An individual holding a written contract.

(6) Corrective action plan--Specific steps to be taken by a contractor to resolve identified deficiencies and/or to address concerns that the contracting agency has regarding the contractor's compliance

with contract terms or other applicable laws, rules, or regulations. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting, and/or financial stability).

(7) Debarment--The termination of the ability to continue an existing contract, to receive a new contract, to participate as a contractor or subcontractor, to provide goods or services to Agency Vocational Rehabilitation (VR) customers either directly or indirectly while working for an Agency contractor, or to make a bid, offer, application, or proposal for an Agency contract.

(8) Effective date--The date of complete execution of the contract or the date upon which the parties agree that the contract takes effect.

(9) Individual--Any individual, corporation, partnership, association, unit of government, or legal entity, however organized, or any portion thereof.

(10) Program--Agency activities that are designed to deliver services or benefits provided by statute.

(11) Respondent--An individual against whom the Agency has initiated a debarment or suspension action.

(12) Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and/or materials required in the original contract.

(13) Suspension--The temporary discontinuance of a contractor's authorization to conduct business with the Agency.

§858.2. *Noncompetitive Open Enrollment Solicitation.*

General. The Agency may acquire goods or services through a non-competitive open enrollment solicitation and enter into enrollment contracts with qualified contractors.

(1) An open enrollment solicitation must be conducted in an open and fair manner that reasonably provides interested, qualified contractors with an equal opportunity to obtain a contract or do business with the Agency.

(2) The Agency may consider past performance when determining whether to award a contract to an applicant.

§858.3. *General Requirements for Contracting.*

(a) To contract with the Agency for VR goods and services [DARS], the contractor must:

[(1) meet eligibility requirements for contracting;]

[(2) if applicable, have and maintain the appropriate license(s);]

[(3) submit all documents and information required by DARS;]

[(4) comply with all applicable DARS and Texas Health and Human Services Commission rules and policies and terms of the contract with DARS;]

[(5) comply with all local, state, and federal regulations that apply to the contract;]

[(6) be authorized by law or the Secretary of State to conduct business in the state of Texas;]

[(7) certify in writing that the contractor's taxes due to the state of Texas are current;]

(1) [(8)] ensure that:

(A) ~~staff members [providing services are competent, professionally ethical, and qualified for positions held. Qualifications of staff members must] meet all qualification requirements established by Agency [state] policy and regulations;[-. The contractor must ensure that]~~

(B) ~~all staff members meet minimum qualifications at application and throughout the term of the contract;~~

(C) ~~staff credentials supporting [those] qualifications are [must be] on file at the time of hire and maintained throughout the term of the contract; and~~

(D) ~~staff credentials are [must be] made available to Agency [DARS] staff [members] upon request;~~

(2) [(9)] ~~provide for such fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting of funds provided by the Agency [DARS and] in accordance with Agency [DARS] policies and maintain financial and other contract records according to recognized fiscal and accounting practices such as the Generally Accepted Accounting Principles (GAAP);~~

(3) [(10)] ~~certify on or before [maintain accurate and complete records and prepare and distribute reports according to] the effective date [terms] of the contract that the contractor has and will maintain adequate operating funds for conducting business;~~

[(11)] ~~ensure that any contractor facility in which services are provided is:~~

[(A)] ~~such that the safety and health of the staff and consumers is protected; and]~~

[(B)] ~~accessible to individuals receiving services and complies with the requirements of the Architectural Barriers Act of 1968, the Uniform Federal Accessibility Standards, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act;]~~

[(12)] ~~have adequate operating funds available for conducting business on the effective date of the contract;]~~

(4) [(13)] ~~have and maintain [an] adequate staff to provide services on the effective date of the contract;~~

(5) [(14)] ~~notify the Agency [DARS and HHSC] in writing of changes to contact [contract] information according to the requirements of the contract. Unless otherwise specified in the contract, the contractor must notify the Agency [DARS and HHSC]:~~

(A) ~~within 10 calendar days after any address change, including of the location of the contractor's office, physical address, or mailing address;~~

(B) ~~immediately of any change in administrator or director; and~~

(C) ~~within seven working days of any change in the contact telephone number designated in the contract; [and]~~

(6) [(15)] ~~report any suspected violation of rules or laws to the appropriate investigative authority. This includes reporting to the Agency any abuse, neglect, or exploitation [abuse, neglect, and exploitation issues to the Texas Department of Family and Protective Services (DFPS) or to the appropriate Texas Department of Aging and Disability Services (DADS) licensing staff].~~

[(b)] ~~To provide services, a contractor must maintain adequate:]~~

[(1)] ~~funding for provision of services; and]~~

[(2)] ~~staff for the provision of services.-]~~

(b) [(e)] ~~A contractor [or potential contractor] may not offer, give, or agree to give an Agency [a DARS] employee anything of value.~~

(c) [(d)] ~~A contractor or applicant [potential contractor] may not engage in any activity that presents a real or apparent conflict of interest and must provide written attestation that no real or apparent conflicts of interest exist before execution of a contract with the Agency.~~

(d) [(e)] ~~Pursuant to Texas Government Code §572.054(b), certain Agency employees [A former DARS employee] may not represent or receive compensation from any individual [person] concerning any contractual matter in which the former employee participated during his or her employment with the state.~~

(e) [(f)] ~~The Agency [DARS] may choose not to enter into a contract:~~

(1) ~~when, in the Agency's [DARS'] opinion, the contractor [potential contractor,] or a controlling party has a documented, unsatisfactory history in contracting with the Agency [DARS] or with another state [health and human services] agency;~~

(2) ~~if the contractor [or potential contractor]:~~

(A) ~~subcontracts any direct care services without specific authorization from the Agency [DARS and HHSC]; and/or~~

(B) ~~assigns or transfers the contract without the Agency's prior written approval [of DARS and HHSC].~~

(f) ~~The Agency may obtain criminal history information from the Texas Department of Public Safety and may use this information in awarding and administering Agency contracts. When the Agency uses the information, the terms and conditions of use are included in the affected contracts~~

(g) ~~Goods or services purchased or reimbursed by the Agency may be inspected or monitored at the discretion of the Agency.~~

[(g)] ~~DARS or HHSC assigns the effective date of a contract.]~~

[(h)] ~~Goods or services purchased or reimbursed by DARS may be inspected or monitored at the discretion of DARS or HHSC.-]~~

(h) [(i)] ~~The Agency [DARS or HHSC] may require corrective action, remove or reassign active customers to other contractors for services [suspend consumer referrals,] and/or impose an adverse action against a contractor for failure to comply with the terms of the contract and/or Agency [DARS or HHSC] rules, policies, and procedures.~~

(i) [(j)] ~~A contractor must participate in orientation relating to Agency [DARS and HHSC] contract requirements before providing goods or services under a contract for the first time.~~

(j) [(k)] ~~A contractor shall ensure that any facility in which services are provided includes individuals [among the staff members, or shall obtain the services of, people] able to communicate in the native language of applicants, recipients of service, and other eligible individuals [and consumers] who have limited English proficiency [speaking ability and ensure that appropriate modes of communication are used for all consumers].~~

(k) [(h)] ~~Contractors [that provide vocational rehabilitation services] shall take affirmative action to employ and advance in employment qualified individuals with disabilities.~~

§858.4. *Complaints.*

Upon request from a customer [the consumer], the contractor must provide [notify] the customer with [consumer of] the appropriate name, mailing address, and telephone number to direct [of DARS for the purpose of directing] complaints to the Agency. The contractor must ver-

ify that the name, mailing address, and telephone number it provides to the customer are current and correct.

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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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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40 TAC §858.5, §858.6

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

§858.5. *Record Requirements.*

§858.6. *Access to Contractor Facilities and Records.*

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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40 TAC §§858.7 - 858.16

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

§858.7. *Contract Monitoring.*

(a) Any service purchased or reimbursed by the Agency [DARS] may be monitored at the discretion of the Agency [DARS or HHSC].

(b) The Agency [DARS and HHSC] may conduct compliance monitoring reviews of the contractor's services to determine if the contractor is in compliance with the contract and with program rules and requirements. These reviews are conducted at the location where the contractor is providing the services unless the Agency [DARS or HHSC] specifies a different location. The Agency shall [DARS and HHSC] assess contractor performance based on contract standards.

(c) The Agency may expand a compliance monitoring review period or any requested review sample at any time.

{(e) During the monitoring review, the contractor must provide:}

{(1) adequate working space for reviewing the records;}

{(2) every record DARS or HHSC requests for review; and}

{(3) copies, or access for DARS and HHSC staff to make needed copies, of documents.}

{(d) During the monitoring review, DARS or HHSC may:}

{(1) review a sample of consumer records to determine the contractor's compliance with contract requirements;}

{(2) interview consumers and staff members;}

{(3) observe consumers and staff members;}

{(4) consult with others, as appropriate; and}

{(5) conduct other activities, as appropriate.}

{(e) DARS or HHSC may expand a compliance monitoring review period or the review sample at any time.}

{(f) DARS and HHSC also conduct fiscal monitoring, which is the review of documentation that supports the contractor's billing, as it exists at the time the DARS or HHSC staff reviews the billing documentation. DARS or HHSC may recoup payment if the service delivery documentation does not support the contractor's billing.}

(d) [(g)] The Agency [DARS and HHSC] may conduct a fiscal monitoring review:

(1) in conjunction with a compliance monitoring review;

(2) independent of a compliance monitoring review;

(3) when a contract is terminated;

(4) as a result of a complaint; or

(5) at other times, as the Agency [DARS or HHSC] considers necessary.

{(h) Fiscal monitoring is designed to ensure that:}

{(1) DARS received the goods or services paid for;}

{(2) The total amount paid by DARS was allowable under the contract; and}

{(3) The contractor maintained the financial records and internal controls necessary to adequately account for claims under the contract.}

(c) [(t)] The Agency [DARS and HHSC] may use sampling methods in monitoring and auditing contracts.

(f) [(j)] The contractor has the burden of proof in establishing entitlement to payments made under the contract.

{(k) The contractor must provide the same accommodations for fiscal monitoring as related to compliance monitoring.}

§858.8. *Corrective Action Plan.*

If requested by the Agency, the [The] contractor must prepare and implement a corrective action plan to address and remedy all deficiencies or violations in a timely manner in response to findings of deficiencies by the Agency [DARS or HHSC] or other federal or state oversight authorities. The corrective action plan must be acceptable to the Agency. The Agency [negotiated to the satisfaction of DARS and HHSC: DARS

or HHSC] may subsequently monitor and document the contractor's compliance with the corrective action plan as accepted.

§858.9. *Adverse Actions.*

(a) The Agency [DARS or HHSC] may impose an adverse action when the contractor fails to follow the terms of the contract or fails to comply with Agency [DARS or HHSC] rules, policies, and procedures. The Agency [DARS or HHSC] may impose adverse actions for reasons including, but not limited to:

(1) the Agency's [DARS' or HHSC's] determination that one or more customers' [consumer] health and safety has been or is jeopardized;

(2) the contractor's failure to submit an acceptable written corrective action plan as requested by the Agency or failure to comply with an accepted [its] corrective action plan;

(3) the contractor's failure to follow an agreed-upon audit resolution payment plan;

(4) the contractor's failure to submit an acceptable cost report, if applicable;

(5) the contractor's failure to comply with the contract [or program] requirements;

(6) the contractor's failure to maintain a current required license or the contractor allowing the expiration of any required license, if applicable;

(7) the contractor's relocation to a new facility address that does not have the appropriate license, if applicable;

(8) the contractor's exclusion from contracting with the Agency or [DARS] any health and human services program; [or the federal government; or]

(9) debarment or exclusion from a federal program;

(10) [(9)] a validated or reports [report(s)] of abuse, neglect, or exploitation where [when the perpetrator is] an owner, employee, or volunteer who has direct access to customers is the perpetrator of, or enables, the abuse, neglect, or exploitation of a customer; [consumers.]

(11) substantiated claims of fraud against a contractor; and

(12) any other cause of so serious or compelling a nature that it affects the contractor's ability to perform under the contract or presents an imminent risk of harm to or liability for the Agency.

(b) The Agency may take the following [Types of] adverse actions [may include]:

(1) Recoup money that the contractor owes as a result of overpayments or other billing irregularities;

[(1) Recoupment. DARS or HHSC collects money the contractor owes as the result of overpayments or other billing irregularities.]

(2) Place a vendor hold on [Vendor hold. DARS or HHSC withholds the contractor's contract payments. DARS or HHSC may put] one or all [of] the contractor's contracts, which must be [on vendor hold. The vendor hold is] released when the Agency [DARS or HHSC] determines that the contractor has resolved the issue or issues causing the hold; [reason(s) for the hold. In addition to the reasons listed in subsection (a) of this section, DARS or HHSC may place a vendor hold on the contractor's contract(s):]

[(A) to recoup overpayments made to the contractor; or]

[(B) to recover any audit exceptions assessed against the contractor.]

(3) Deny all or part of a claim;

(4) Direct the contractor to suspend or terminate a subcontractor's participation in the provision of goods or services;

(5) Terminate a contract for cause before its expiration date;

(6) Suspend the contractor's right to conduct business with the Agency;

(7) Debar the contractor's right to contract or conduct business with the Agency, in any capacity, for a specified period of time; or

(8) Take any other less severe action or actions, which the Agency determines necessary to ensure the contractor's compliance with the underlying contract, after considering the circumstances of a particular case.

[(3) Denial of claim. DARS or HHSC denies payment in whole or part for a claim filed within program time limits.]

[(4) Suspension of subcontractor's participation or payments; termination of subcontract. DARS or HHSC directs a contractor to suspend a subcontractor's participation, suspend a subcontractor's payments, or terminate a subcontract.]

[(5) Involuntary contract termination. DARS or HHSC may terminate a contract for cause by citing the contractor's failure to comply with the terms of the contract or with DARS or HHSC rules, policies, and procedures.]

[(6) Suspension. DARS or HHSC temporarily suspends the contractor's right to conduct business with DARS. The causes for and conditions of suspension are described in §392.323 of this subchapter (relating to Causes and Conditions of Suspension).]

[(7) Debarment. DARS or HHSC does not allow a contractor to conduct business with DARS, in any capacity, for a certain period of time. The causes for and conditions of debarment are described in §392.321 of this subchapter (relating to Causes and Conditions of Debarment).]

§858.10. *Debarment and Suspension of Contractors [Current and Potential Contractor Rights].*

(a) Debarment and suspension apply to contracts.

[(a) Requirements in this section apply to all types of contracts with DARS.]

(b) Debarment shall be imposed for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed three years, except for violations of 41 USC Chapter 81 Drug Free Workplace. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Agency may extend the debarment for an additional period, if the Agency determines that an extension is necessary to protect the Agency's interest. However, a debarment may not be extended solely upon the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the same procedures to impose an initial debarment shall be followed to extend the debarment.

[(b) Debarment is the termination of rights to continue an existing contract, to receive a new contract, to participate as a contractor or manager, to provide goods or services to DARS consumers either directly or indirectly while working for a DARS or HHSC contractor, or to make a bid, offer, application, or proposal for a DARS or HHSC contract. The debarment is for a specified time commensurate with

the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. Generally, debarment does not exceed six years. Where conditions warrant, a longer period may be imposed.]

(c) A suspension is in effect until an investigation, hearing or trial is concluded and the Agency determines the contractor's future ability to contract or subcontract with the Agency.

~~[(e) Suspension is the temporary suspension of a contractor's or potential contractor's rights to conduct business with DARS or HHSC. A suspension is in effect until an investigation, hearing, or trial is concluded and DARS can make a determination about:]~~

~~[(1) the contractor's future right to contract or subcontract; or]~~

~~[(2) a potential contractor's future right to have DARS or HHSC consider its offer, bid, proposal, or application.]~~

(d) The Agency may suspend a contractor's contract if the Agency suspects that grounds may exist for debarment.

(e) [(d)] For purposes of both debarment and suspension of a contract, the Agency [contractual rights, DARS or HHSC] may impute the conduct of an individual even [an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even] though the underlying conduct may have occurred while the respondent [an individual, corporation, partnership, or other association] was not associated with the contractor [or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor are considered in determining whether either suspension of contractual rights or debarment is warranted].

§858.11. Causes and Conditions of Debarment.

(a) The Agency may debar [DARS or HHSC may remove contractual rights from an individual, a corporation, a partnership, or a division of] a contractor [or legal entity] for reasons [causes] including the following:

(1) Being adjudicated as [being found] guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court relating to:

(A) Obtaining, [obtaining] attempting to obtain, or performing a public or private contract or [contractor] subcontract;

(B) Engaging [engaging] in embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, receipt of stolen property, making false statements or claims, tax evasion, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) Use or possession of [being involved with dangerous drugs,] controlled or illegal substances, or other drug-related offense;

(D) Violating [violating] federal antitrust statutes arising from submitting bids or proposals;

(E) Committing [committing] an offense involving physical or sexual abuse or neglect; or

(F) Committing an offense involving the direct support or promotion of human trafficking.

(2) Being [being] debarred from contracting by any unit of the federal or [government or any unit of a] state government;

(3) Violating Agency [violating DARS or HHSC] contract provisions, including failing to perform according to the terms, conditions, and specifications, or within the time [limit(s)] specified, in an Agency [a DARS or HHSC] contract, including, but not limited to, the following:

(A) Failing [failing] to abide by applicable federal and state statutes, rules, regulations, policies, and procedures, such as those regarding individuals [persons] with disabilities and those regarding civil rights;

(B) Having [having] a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. [This subparagraph applies only for actions occurring after the effective date of these rules.] Failure to perform and unsatisfactory performance include, but are not limited to, [includes] the following:

(i) Failing [failing] to correct contract performance deficiencies after receiving written notice about them from the Agency [DARS, HHSC,] or its [their] authorized agents;

(ii) Failing [failing] to repay or make and complete [follow through with] arrangements satisfactory to the Agency [DARS or HHSC] to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) Failing [failing] to meet standards that are required for licensure or certification, or that are required by state or federal law, Agency [DARS or HHSC] rules, or Agency policy [or standards incorporated in contracts] concerning contractors [DARS contracts];

(iv) Failing [failing] to execute contract amendments required by the Agency [DARS or HHSC];

(v) Billing [billing] for services or goods [merchandise] not provided to the customer [consumer];

[(vi) submitting cost reports containing costs not associated with or not covered by the contract or DARS rules and instructions. Intent to increase individual or statewide rates or fees by submitting unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;]

(vi) [(vii)] Submitting [submitting] a false report or misrepresentation which, if used, may increase individual or statewide rates or fees;

(vii) [(viii)] Charging customers [charging consumer or patient] fees contrary to Agency [DARS or HHSC] rules or policy;

(viii) [(ix)] Failing [failing] to notify and reimburse the Agency [DARS] or its agents for services that the Agency [DARS] paid for when the contractor received reimbursement from a liable third party;

(ix) [(x)] Failing [failing] to disclose or make available[,] upon demand[,] to the Agency [DARS] or its representatives (including appropriate federal and state agencies) records that the contractor is required to maintain;

(x) [(xi)] Failing [failing] to provide and maintain services within standards required by statute, regulations [regulation], or contract; or

(xi) [(xii)] Violating [violating] the Texas Human Resources, Government, or Labor Code provisions applicable to the contractor [contract] or any rule or regulation issued under the referenced Codes [Code];

(4) Submitting [submitting] an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) Engaging [engaging] in an abusive or neglectful practice that results in or could result in death or injury to the customer [consumer] served by the contractor; [or]

(6) Knowingly [knowingly] and willfully using a debarred individual [person or legal entity] as an employee, independent contractor, or agent associated with any service provided in performance of [to perform] a contract with the Agency; [DARS or HHSC.]

(7) Failure to pay a substantial debt or debts, including disallowed costs and overpayments, owed to any federal or state agency instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(8) Any other cause of a serious or compelling nature that affects a contractor's present or future ability to perform under the contract or that presents an imminent risk of harm to or liability for the Agency;

(b) In accordance with terms specified by the Agency, an individual [DARS or HHSC, individuals, parts of entities, and entities] that has [have] been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract that has been awarded before debarment;

[(3) bid or otherwise make offers to receive a contract or subcontract;]

(3) [(4)] participate as a vendor in Agency [DARS] programs that do not require the individual [contractor] to sign a contract or agreement;

(4) provide goods or services to Agency customers either directly or indirectly while working for an Agency contractor; or

(5) either directly or through an intermediary, bill to or receive payment from the Agency for any services or supplies provided by the debarred individual on or after the effective date of the debarment. The Agency will not pay for any services ordered, prescribed, or delivered by the debarred individual to Agency customers after the date of debarment. No costs associated with a debarred individual, including the salary, fringe benefits, overhead, payments to, or any other costs associated with an individual who was debarred may be included in an Agency cost report or any other document that will be used to determine an individual payment rate, a statewide payment rate, or a fee. Nothing in this provision shall be construed in a manner that would prevent a debarred individual, who is also a VR customer, from receiving VR services as a VR customer.

[(5) either personally or through a clinic, group, corporation, or other association, bill to or receive payment from DARS for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, DARS will not pay for any services ordered, prescribed, or delivered by the debarred entity for DARS recipients after the date of debarment. No costs associated with a debarred entity, including the salary, fringe, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was

debarred may be included in a DARS cost report or any other document that will be used to determine an individual payment rate, a statewide payment rate, or a fee; or]

[(6) provide goods or services to DARS consumers either directly or indirectly while working for a DARS contractor.]

(c) A single occurrence of a violation may result in debarment or suspension.

[(c) Debarment may be applied against an individual, a corporation, a partnership, a division of a contractor, or an entire legal entity, or a specified part of a legal entity.]

[(d) Even a single occurrence of a violation may result in debarment or suspension if it is severe. Other adverse actions may be taken if the violation is isolated or less severe.]

§858.12. Causes and Results [Conditions] of Suspension.

(a) The Agency [DARS or HHSC] may suspend a contract [contractor's or potential contractor's contractual rights] whenever [DARS or HHSC finds that there is a reasonable basis to believe that] grounds for debarment exist.

(b) Suspension will result in one or more of the [may be imposed immediately] following: [DARS' or HHSC's notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor if the contractor has an outstanding indictment or DARS or HHSC has information about an offense that is grounds for indictment.]

[(b)] [The conditions of suspension are:]

(1) The Agency [DARS or HHSC] may withhold payments, wholly or partly, to the [affected] contractor during the period of suspension.

(2) The Agency [DARS or HHSC] may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected [potential] contractor during the period of suspension.

(3) The Agency [DARS or HHSC] may remove existing customers referred from or cease referring customers [referrals of additional consumers] to a [the] suspended contractor [entity] and may transfer existing customers [consumers] to other contractors.

(c) If the Agency [DARS or HHSC] determines that the underlying reasons for suspension have been resolved in favor of the respondent, the Agency [contractor, DARS or HHSC] must, if applicable:

(1) pay the withheld payments for [any] services that were provided during the suspension and that met the terms of an existing contract; and

(2) resume contract payments and customer [consumer] referrals.

(d) If the Agency [DARS or HHSC] determines that the underlying reasons for [the] suspension are [have] not [been] resolved in favor of the respondent, the Agency shall institute [contractor, DARS or HHSC institutes] debarment proceedings.

(e) In accordance with terms specified by the Agency, an individual [DARS or HHSC, individuals and entities] whose contract has [contractual rights have] been placed in suspension may not:

(1) receive a contract;

(2) submit an offer, bid, application, or proposal for a contract; or

(3) provide goods or services to Agency customers [DARS or HHSC consumers] either directly or indirectly while working for an Agency [a DARS] contractor.

(f) A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§858.13. Evidence for Debarment [or Suspension].

In making a debarment decision, the Agency may consider the following factors:

(1) The actual or potential harm or impact that results or may result from the wrongdoing.

(2) The frequency of incidents and/or duration of the wrongdoing.

(3) Whether there is a pattern or history of wrongdoing.

(4) Whether an individual is or has been disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements based on conduct similar to one or more of the causes for debarment specified in this part.

(5) Whether and to what extent the individual planned, initiated, or carried out the wrongdoing.

(6) Whether the individual accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct that led to the cause for debarment.

(7) Whether the individual paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.

(8) Whether the individual cooperated fully with the government agencies during the investigation and with any court or administrative action. In determining the extent of cooperation, the Agency may consider when the cooperation began and whether the individual disclosed all pertinent information known to the individual.

(9) Whether the wrongdoing was pervasive within the individual's organization.

(10) The types of positions held by the individuals involved in the wrongdoing.

(11) Whether the individual's organization took appropriate corrective action or remedial measures.

(12) Whether the individual's principals tolerated the offense.

(13) Whether the individual brought the activity cited as a basis for the debarment to the attention of the appropriate Agency representative in a timely manner.

(14) Whether the individual fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Agency.

(15) Whether the individual had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(16) Whether the individual took appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for debarment.

(17) Whether the individual had adequate time to eliminate the circumstances within the individual's organization that led to the cause for the debarment.

(18) Other factors related to the contractor's required performance under the contract that the Agency determines are appropriate to the circumstances of a particular case.

The sufficiency of evidence required depends on the cause of the suspension or debarment.]

[(1) If there is evidence that the contractor or potential contractor has been found guilty, pleaded guilty, pleaded no contest, or received a deferred adjudication in criminal court relating to an activity prohibited in this chapter, that is sufficient evidence to suspend or debar. If the decision that caused debarment is reversed on appeal, the contractor must provide written proof of the reversal to have its contract rights restored. DARS or HHSC restores contract rights unless the contractor is also debarred or suspended on other grounds.]

[(2) If the cause is debarment from contracting by any unit of the federal government or any unit of a state government, it is sufficient to offer official notice from the other state or federal agency that the entity has been debarred. The notice may be addressed to either DARS or HHSC.]

[(3) Other causes of debarment or suspension may be established by evidence of failure to meet contracting terms or standards, including evidence of the severity or recurrence of violations of performance requirements.]

§858.14. Notice for Debarment or Suspension.

Written notices of suspension or debarment must include the following, as applicable:

(1) the grounds for the action;

(2) the length of the debarment;

(3) the conditions that might cause a suspension to be released;

(4) a statement explaining the effect of the suspension or debarment; and

(5) a statement as to [of] whether the suspension or debarment is in effect for all Agency contracts [throughout DARS] or just for [in] a particular Agency contract [DARS program].

§858.15. Appeals.

(a) A contractor may [has the right to] appeal an initial [any] adverse action rendered [imposed] by the Agency under §858.9 of this chapter by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing [DARS]. A contractor shall only submit an appeal by hand delivery, mail, or common carrier to the Agency as directed on the Contractor Notice of Appeal Rights (VR 1309). An appeal sent by unapproved methods or to a different address will not be considered by the Agency as a valid appeal.

(b) The Agency's initial adverse action is final for all purposes unless the contractor files an appeal not later than 28 calendar days after the date on which the initial adverse action is mailed, sent by electronic mail, or sent by facsimile to the contractor. The timeliness of an appeal is subject to the rules and procedures set out in the Unemployment Insurance rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under these Chapter 858 rules or the contract between the parties. [To appeal an adverse action, the contractor, referred to in this subchapter as the appellant, must ensure that DARS receives a written request for an appeal within 30 days of the contractor's receipt of the notice of adverse action.]

[(e) The appellant must ensure that the request for an appeal:]

~~[(1) clearly states that the purpose of the letter is to appeal DARS' adverse action;]~~

~~[(2) is received by DARS at the address provided in the notice of adverse action letter;]~~

~~[(3) is received by DARS according to time frames provided in this section; and]~~

~~[(4) includes all required information and documentation as outlined in this section.]~~

~~(c) [(d)] To be considered, the appeal must include the following:~~

~~(1) A statement of facts describing how an Agency [a] decision, action, or inaction [by DARS] deviated from contract terms, published policy, or state or federal laws or regulations;~~

~~(2) The contractor's [appellant's] claim, including pertinent contract sections;~~

~~(3) A statement of the issue or issues [issue(s)] in dispute;~~

~~(4) A brief statement about why the Agency's initial adverse action [DARS' decision] is wrong;~~

~~(5) Copies of evidence or documentation supporting the appeal; and~~

~~(6) The action requested.~~

~~(d) The contractor may supplement its appeal after being perfected but before the Agency rendering a decision on the merits.~~

~~(e) As part of the appeal, the contractor may also request a meeting with the Agency. Whether a meeting will be granted is at the Agency's discretion. The meeting request should include a description of any special accommodations needed for the contractor, witnesses, or representatives. At the meeting, the contractor may:~~

~~(1) be represented by an individual of the contractor's selection; and~~

~~(2) present evidence and information to support the contractor's position.~~

~~[(e) In the request for an appeal letter, the appellant may also request a meeting with DARS. This request should include a description of any special accommodations needed for the appellant, witnesses, or representatives. At the meeting, the appellant:]~~

~~[(1) may be represented by a person of his or her selection; and]~~

~~[(2) will be provided with an opportunity to present evidence and information to support his or her position.]~~

~~(f) The Agency will notify the contractor whether its appeal has been perfected and has met the requirements in subsection (c) of this section for consideration on its merits. If the appeal does not meet the requirements, [of this chapter, DARS will notify] the [appellant that their request for an] appeal will be [is] denied, and the initial adverse action will be the Agency's final decision [because it did not meet requirements].~~

~~(g) An Agency appeal decision becomes final 14 [DARS provides a written decision to the appellant within 30 days after conclusion of the meeting, or if no meeting is held, within 45] days after the date [DARS receives] the appeal decision is mailed, [appeal,] unless the contractor files a written request for reconsideration before that date [the appropriate DARS representative extends the time].~~

§858.16. Request for Reconsideration.

~~(a) The contractor [After DARS issues a decision on an appeal, the appellant] may submit [in writing] a request for reconsideration following the Agency's issuance of the appeal decision by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing:~~

~~(1) A request for reconsideration shall only be hand delivered, mailed, or sent by common carrier to the Agency as directed on the Contractor Notice of Rights (VR 1309). A request for reconsideration sent by unapproved methods or to a different address will not be considered a valid request for reconsideration by the Agency.~~

~~(2) The timeliness of a request for reconsideration is subject to the rules and procedures set out in the Unemployment Insurance rules at Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under these Chapter 858 rules or the contract between the parties.~~

~~[(b) An appellant may submit a request for reconsideration only if the appellant's request for an appeal met the requirements set out in §392.329 of this subchapter (relating to Appeals).]~~

~~[(c) Requests for reconsideration must be addressed to the DARS commissioner and must be received by DARS within 20 days after the date DARS issues the decision on the appeal.]~~

~~[(d) The DARS commissioner may designate a representative(s) to receive the request for reconsideration and issue a decision on behalf of DARS.]~~

~~(b) [(e)] A [The] request for reconsideration shall not be granted unless each of the following three criteria are met [must]:~~

~~(1) there is an offering of new evidence, which was not presented as part of the original [clearly state that the purpose of the letter is to request reconsideration of DARS' decision on an] appeal pursuant to §858.15 of this chapter;~~

~~(2) there is a compelling reason why the evidence was not presented earlier; and~~

~~(3) there is a specific explanation of how consideration of the evidence would change the outcome of the decision.~~

~~[(2) specifically point out any errors in the appeal decision;]~~

~~[(3) specify all relief requested; and]~~

~~[(4) state all reasons why the relief should be granted.]~~

~~(c) The Agency's decision on the request for reconsideration is the final decision of the Agency.~~

~~[(f) DARS issues a decision on the request for reconsideration no later than 45 days after receipt of the request for reconsideration. The decision may affirm, reverse, or modify the adverse action previously imposed by DARS.]~~

~~[(g) The decision on the request for reconsideration is the final decision of DARS. However, if the contractor believes DARS breached the contract, the contractor may pursue further action according to Government Code, Chapter 2260.]~~

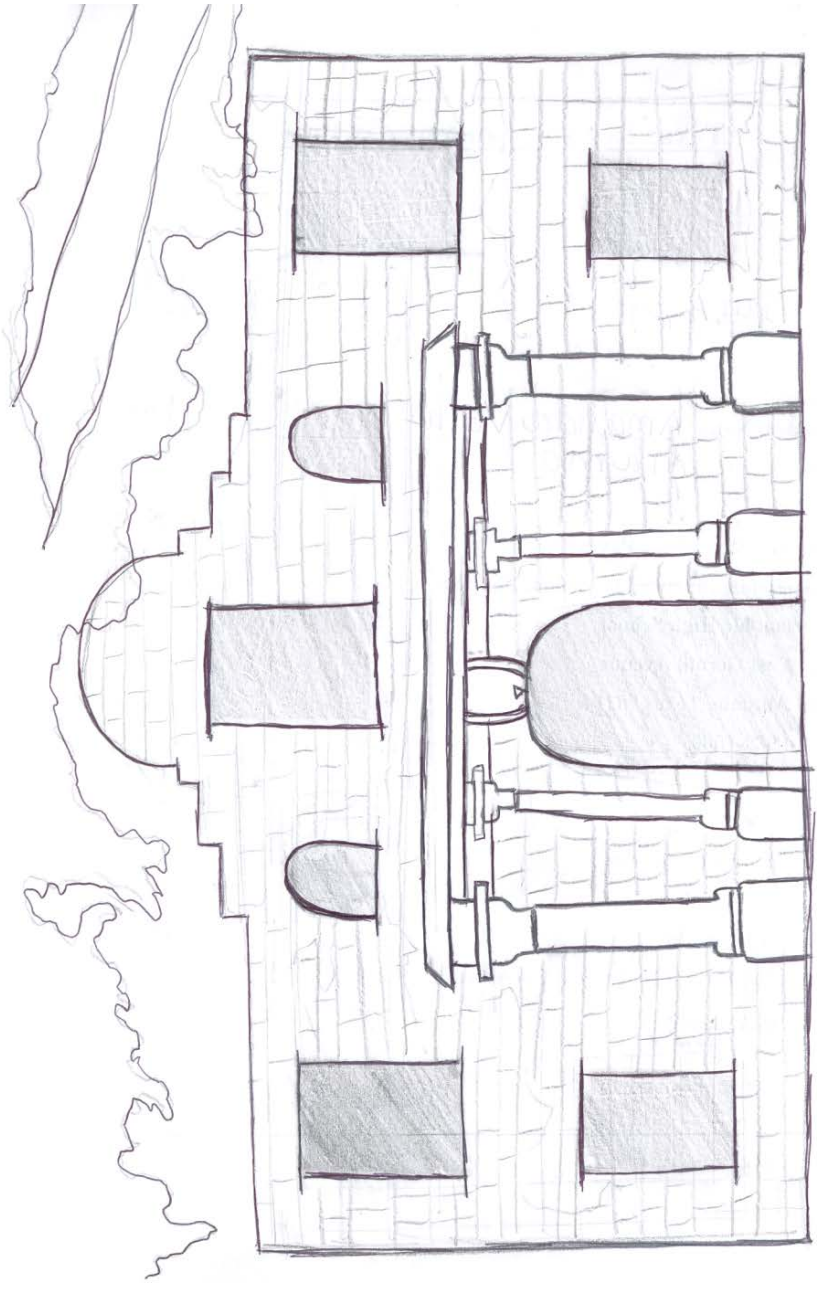
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-202000473

Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: March 22, 2020
For further information, please call: (512) 689-9855





WITHDRAWN RULES

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207, §651.220

The Texas Forensic Science Commission withdraws the proposed amended §651.207 and §651.220, which appeared in the October 18, 2019, issue of the *Texas Register* (44 TexReg 6010).

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000476

Leigh Savage

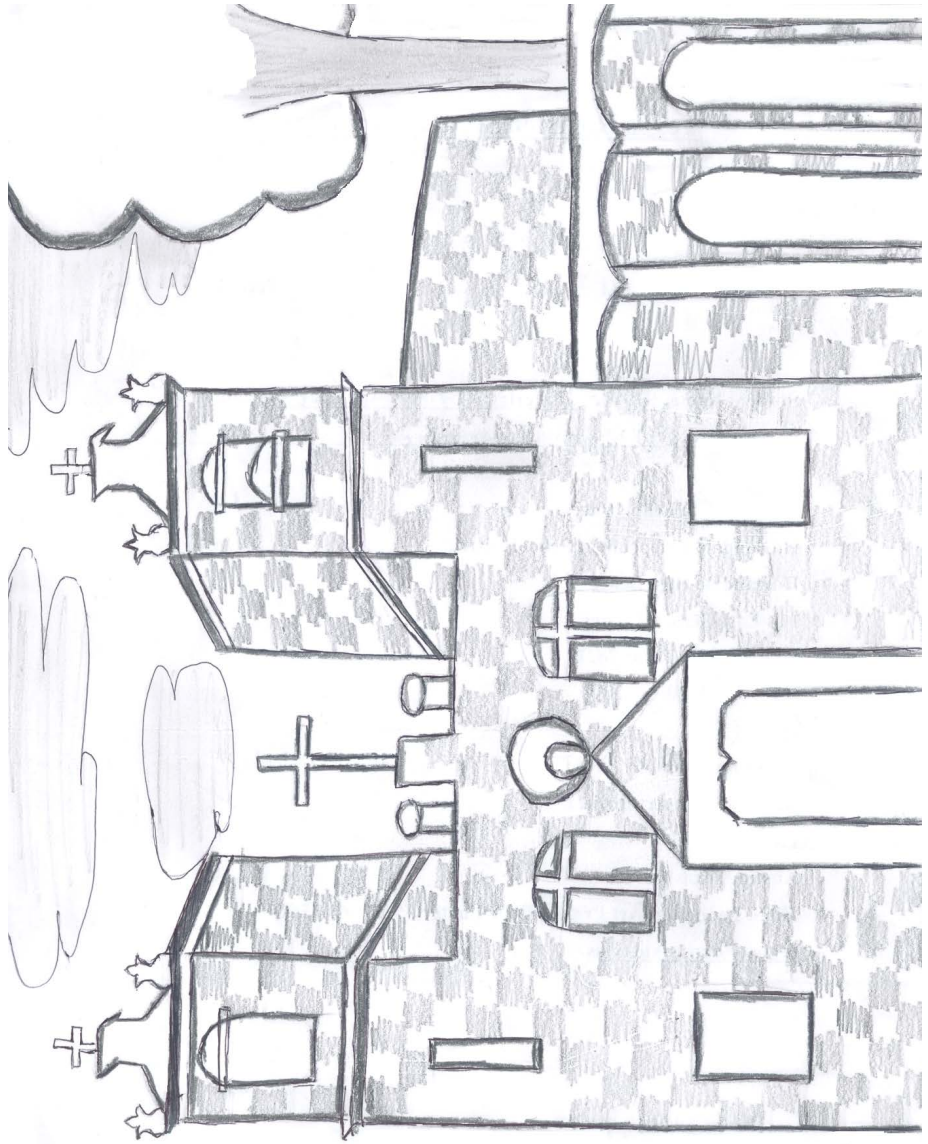
Associate General Counsel

Texas Forensic Science Commission

Effective date: February 10, 2020

For further information, please call: (512) 936-0661





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 32. CLINICAL LABORATORY SERVICES

1 TAC §355.8610

The Texas Health and Human Services Commission (HHSC) adopts amended §355.8610, concerning Reimbursement for Clinical Laboratory Services. The amendment to §355.8610 is adopted without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6471). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

HHSC adopts the amendment to the rule governing Clinical Laboratory Services reimbursement. The amendment updates the rule to allow HHSC to establish fees based on a percentage of the Medicare fee schedule and removes the limitation that would not allow payments to exceed the Medicare fee schedule. Currently, HHSC Medicaid fees for clinical laboratory services provided by the Department of State Health Services (DSHS) Laboratory are set at 100 percent of the Medicare fee. The Medicare fee schedule may adjust fees more frequently or in a manner that could negatively impact the DSHS Laboratory. Of particular concern is the series of tests that comprise the newborn screening, which are provided solely by the DSHS laboratory for all Texas newborns.

This amendment allows HHSC to reimburse for clinical laboratory services at a percentage of the Medicare fee schedule, which still permits flexibility for HHSC to maintain existing funding for the DSHS Laboratory and its ability to continue to provide newborn screenings for Medicaid newborns.

COMMENTS

The 31-day comment period ended December 2, 2019.

During this period, HHSC received one comment regarding the proposed rule from the American Clinical Laboratory Association. A summary of the comment relating to the Clinical Lab Services rule amendment and HHSC's response follow.

Comment: The commenter agrees with the flexibility the amendment affords HHSC by removing the limitation that at present, does not allow payments to exceed the Medicare fee schedule.

Response: HHSC appreciates the support for the proposed amendment. No revision to the rule text is necessary.

STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on February 6, 2020.

TRD-202000437

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 26, 2020

Proposal publication date: November 1, 2019

For further information, please call: (512) 428-1962



TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER K. CREDIT UNION DEVELOPMENT DISTRICTS

7 TAC §91.2000

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter K, §91.2000, concerning purpose and scope, without changes to the proposed text as published in the November

15, 2019, issue of the *Texas Register* (44 TexReg 6985). The amendments will not be republished.

The amended rule corrects a reference to the Texas Tax Code relevant to the Tax Increment Financing Act or the Property Re-development and Tax Abatement Act.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

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 February 10, 2020.

TRD-202000477

John J. Kolhoff

Commissioner

Credit Union Department

Effective date: March 1, 2020

Proposal publication date: November 15, 2019

For further information, please call: (512) 837-9236



CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION SUBCHAPTER B. LIQUIDATING AGENTS

7 TAC §95.200

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter B, §95.200, notice of taking possession; appointment of liquidating agent; subordination of rights, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6986). The rule will not be republished.

The amended rule allows the Department to name a liquidating agent other than a deposit insurer as authorized under the Texas Finance Code, ensure consistent language relative to both federal and private deposit insurance providers, and reference the guidelines for liquidation action found within the Texas Finance Code §126.201 instead of reiterating specific guidelines within the rule.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

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 February 10, 2020.

TRD-202000478

John J. Kolhoff

Commissioner

Credit Union Department

Effective date: March 1, 2020

Proposal publication date: November 15, 2019

For further information, please call: (512) 837-9236



PART 7. STATE SECURITIES BOARD

CHAPTER 102. COMPLAINT PROCESS

7 TAC §§102.1 - 102.6

The Texas State Securities Board adopts new Chapter 102, §§102.1 - 102.6, concerning the Agency's Complaint Process, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6987). The rules will not be republished.

The new chapter implements House Bill (HB) 1535 amendments to §2-6 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019. Specifically, §2-6 of the Act was amended to require the Agency to maintain a system to promptly and efficiently act on complaints; to maintain information about the parties to the complaint, subject matter of the complaints, a summary of the results of the review or investigation of the complaint, and its disposition; to make information available describing the Agency's complaint procedures; and to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

The new provisions also implement a recommendation made by the Texas Sunset Advisory Commission to lay out and describe all phases of the Agency's complaint process, including the steps that precede contested cases at the State Office of Administrative Hearings, so that they are available to the public. The new rules summarize the Agency's existing procedures for handling complaints as part of the Agency's rules and provide transparency to members of the public and to those who are under investigation.

Complainants and the subjects of the complaints will be apprised of the process the Agency follows for complaint receipt, investigation, and resolution, and the Agency's process for handling complaints will be both fair and timely.

No comments were received regarding adoption of the new chapter.

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

The new rules affect Texas Civil Statutes, Articles 581-1, et seq.

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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Travis J. Iles

Securities Commissioner

State Securities Board

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



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.23

The Texas State Securities Board adopts new rule §115.23, concerning Notice of Cybersecurity Incident, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6989). The rule will not be republished.

The new rule requires a registered dealer ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system when a notice is otherwise provided to a state or federal agency, law enforcement, or a self-regulatory body, or a data breach notification is provided to customers of the registrant.

The rule enhances regulatory oversight over the ability of registrants to protect sensitive customer information, which will result in stronger and more secure protection of sensitive customer information and other confidential information.

No comments were received regarding adoption of the new rule.

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

The adopted new rule affects: none applicable.

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

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.23

The Texas State Securities Board adopts new rule §116.23, concerning Notice of Cybersecurity Incident, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6990). The rule will not be republished.

The new rule requires a registered investment adviser ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system when a notice is otherwise provided to a state or federal agency, law enforcement, or a self-regulatory body, or a data breach notification is provided to customers of the registrant.

The rule enhances regulatory oversight over the ability of registrants to protect sensitive customer information, which will result in stronger and more secure protection of sensitive customer information and other confidential information.

No comments were received regarding adoption of the new rule.

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

The new rule affects: none applicable.

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

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CHAPTER 127. MISCELLANEOUS

7 TAC §127.2

The Texas State Securities Board adopts new rule §127.2, concerning Alternative Dispute Resolution, with changes to the proposed text due to an omission of a word as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6992). The rule will be republished.

The new rule implements new §2-8 of the Texas Securities Act, which was added to the Act by House Bill 1535, passed during the 86th legislative session, which became effective September 1, 2019. The new rule establishes the Agency's policies and

procedures for the use of alternative dispute resolution (ADR) to resolve disputes as required by this new section of the Act, which requires the Board to establish a policy on the use of ADR procedures under Chapter 2009, Texas Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

The rule provides a clear and consistent process for resolving disputes through ADR.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Articles 581-2-8 and 581-28-1; Chapter 2009 of the Government Code; and Chapter 154 of the Civil Practice and Remedies Code. Section 2-8 authorizes the Board to develop a policy to encourage the use of appropriate ADR procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 2009 of the Government Code authorizes governmental bodies to develop and use ADR procedures which are consistent with Chapter 154 of the Civil Practice and Remedies Code and the administrative procedure law, Chapter 2001 of the Government Code. Chapter 154 of the Civil Practice and Remedies Code sets forth ADR procedures for Texas trial and appellate courts.

The new rule affects Texas Civil Statutes, Article 581-2-8.

§127.2. Alternative Dispute Resolution.

(a) Policy. It is the Board's policy to encourage the fair and expeditious resolution of disputed matters, internal and external, through voluntary and informal settlement negotiations. This section sets out the Agency's alternative dispute resolution (ADR) procedures to be used when proceeding under Chapter 2009 of the Government Code. However, the ADR procedures in this section are intended to supplement and do not limit the use of any other informal dispute resolution or negotiated settlement procedures available to the Agency.

(b) Resolution and costs. Any resolution reached as a result of ADR procedures is intended to be through the voluntary agreement of the parties. The allocation of the costs of ADR are subject to negotiation and agreement between the parties. The party who requests ADR may be liable for the cost of any third-party mediator, moderator, arbitrator, or ombudsman and shall otherwise bear his or her own costs arising from the use of ADR.

(c) Coordinator. The Securities Commissioner shall designate at least one employee of the Agency to serve as the Agency's ADR coordinator to:

- (1) coordinate the implementation of the Agency's ADR policies;
- (2) serve as a resource for any training needed to implement the procedures for ADR; and
- (3) collect data concerning the effectiveness of the ADR procedures as implemented by the Agency.

(d) Statutory requirements. ADR must be consistent with the Government Code, Chapter 2009; Civil Practice and Remedies Code, Chapter 154; and the Administrative Procedure Act, Government Code, Chapter 2001. Confidentiality of records and communications

related to the subject matter of an ADR proceeding shall be governed by Civil Practices and Remedies Code, §154.073.

(e) State Office of Administrative Hearings (SOAH).

(1) SOAH mediators may be assigned to disputed matters or contested cases as needed. If the mediator is a SOAH Administrative Law Judge (ALJ), that person will not also sit as the ALJ for the case if the disputed matter or contested case goes to public hearing.

(2) When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues which will be tried at SOAH through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the ALJ assigned to conduct the hearing and shall be included in the hearing record.

(f) Contract claims.

(1) In addition to the requirements of Government Code, Chapter 2009, ADR for contracting claims must also be consistent with the Government Code, Chapter 2260; and the Office of the Attorney General's rules for negotiation and mediation of certain contract disputes (1 TAC Chapter 68).

(2) Upon receipt of notice of a contract claim under Government Code Chapter 2260, the Securities Commissioner, in consultation with the ADR coordinator and the Director of Staff Services, or their designees, shall determine whether use of an ADR procedure is a required or appropriate method for resolving the contract dispute.

(3) If ADR procedures are determined to be the appropriate method for resolving a contract claim, the Securities Commissioner, or the Commissioner's designee, shall recommend to the claimant that the parties use ADR to resolve the dispute.

(4) The ADR coordinator and Director of Staff Services will collaborate with the claimant to select an appropriate procedure for ADR, and implement the agreed upon procedure consistent with the applicable statutory requirements and the guidelines established by the Office of the Attorney General and SOAH.

(g) Contested cases.

(1) A contested case pending before SOAH may be submitted for ADR if both the respondent and the Director of the Division signing the notice of hearing agree that ADR would be an appropriate means to attempt to reach a negotiated settlement of the matter.

(2) ADR will be conducted before SOAH. The parties to the contested case shall collaborate to select an appropriate procedure for ADR and implement the agreed upon procedure consistent with SOAH's model guidelines.

(3) The full resolution of a contested case reached as a result of ADR must be in writing and signed by all of the parties and submitted to the Securities Commissioner for review and approval.

(4) "Party" as used in this subsection shall have the same meaning as set forth in the Administrative Procedure Act, Government Code, Chapter 2001.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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7 TAC §127.4

The Texas State Securities Board adopts new rule §127.4, concerning Prosecutorial Assistance to County or District Attorneys, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6993). The rule will not be republished.

The new rule implements §3 of the Texas Securities Act, which was amended by House Bill 1535, passed during the 86th legislative session, which became effective September 1, 2019. Section 3 of the Act, as amended, requires the Board to adopt rules to establish a process to determine staff resources available to support prosecutions of referred cases. New §127.4 requires the Securities Commissioner to make certain determinations and consider certain factors before Agency resources are provided to county or district attorneys to support the prosecution of referred cases.

The rule ensures that the Agency continues to use its appropriated resources in a responsible manner that supports the prosecution of securities crimes while being mindful of its other statutory responsibilities.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 581-3. Section 3 requires the Board to adopt rules to establish a process to enable the Securities Commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case, and if so, the appropriate amount of such assistance.

The new rule affects Texas Civil Statutes, Article 581-3.

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER DD. TITLE IX TRAINING ADVISORY COMMITTEE

19 TAC §§1.9531 - 1.9536

The Texas Higher Education Coordinating Board adopts new Chapter 1, Subchapter DD, §§1.9531 through 1.9536, concerning the Title IX Training Advisory Committee, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7116). The rules will not be republished.

Specifically, the new rules authorize the Board to create an advisory committee to make recommendations to the Coordinating Board regarding rules for adoption under §51.295 of the Texas Education Code; and develop recommended training for responsible and confidential employees designated under §51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions. The newly added rules will affect students when the recommendations are adopted by the Board.

No comments were received regarding the new Chapter 1, Subchapter DD, §§1.9531 through 1.9536.

The new rules are adopted under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of advisory committees and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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

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William Franz
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For further information, please call: (512) 427-6523



SUBCHAPTER EE. STUDY AND REPORT ON CORE CURRICULUM ADVISORY COMMITTEE

19 TAC §§1.9541 - 1.9546

The Texas Higher Education Coordinating Board (THECB) adopts new Chapter 1, Subchapter EE, §§1.9541 - 1.9546, concerning the Study and Report on Core Curriculum Advisory Committee, without changes to the proposed text of §§1.9541 - 1.9544 and §1.9546 and with changes to the proposed text of §1.9545 as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7117). Sections 1.9541 - 1.9544 and 1.9546 will not be republished. Section 1.9545 will be republished.

Specifically, the new rules authorize the Board to create an advisory committee to provide the Board with recommendation(s) regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §61.822 in supporting more efficient undergraduate transfer between institutions of higher education. The newly added rules will affect students when the recommendations are adopted by the Board.

No comments were received regarding the new Chapter 1, Subchapter EE, §§1.9541 - 1.9546.

The new rules are adopted under the Texas Education Code, §61.8221, which provides the Coordinating Board with the authority to establish an advisory committee to assist the Board in completing the board's duties under this section and provide the Board with subject matter expertise and analysis and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

§1.9545. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (d) of this section. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) The advisory committee shall study and make recommendations to the board regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §61.822 in supporting more efficient undergraduate transfer between institutions of higher education. The study and recommendations must include an analysis of:

(1) the efficacy of dividing the recommended core curriculum for each meta major into a general academic core curriculum and an academic discipline core curriculum and, if determined to be efficacious, the recommended number of semester credit hours for each component of the recommended core curriculum for each meta major;

(2) methods to ensure that courses completed in the general academic core curriculum and academic discipline core curriculum transfer between institutions of higher education for course credit applied toward a student's major at the receiving institution; and

(3) the potential inclusion of courses in the field of study curricula adopted by the board under §61.823 in the recommended core curriculum adopted by the board under §61.822.

(c) Each quarter ending before November 1, 2020, the advisory committee shall submit to the chairs of the standing legislative committees with primary jurisdiction over higher education and to the Board a report on the advisory committee's progress on the study and recommendations required under subsection (b) of this section.

(d) Not later than July 1, 2020, the advisory committee shall submit to the Board a report that includes the results of the study conducted under subsection (b) of this section and any recommendations for legislative or other action.

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

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William Franz

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6523



CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.73

The Texas Higher Education Coordinating Board adopts amendments to Chapter 6, Subchapter C, §6.73 of Board rules concerning the nursing, allied health, and other health-related education grant programs, without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6190). The rule will not be republished.

Specifically, these amendments align Board rules to the Texas Education Code, Chapter 6, Subchapter C, §63.202(f) and (g), enacted by House Bill 1401, 86th Texas Legislature, Regular Session, that extends exclusive priority of funding under the permanent fund for higher education nursing, allied health, and other health-related programs to institutions proposing to address the shortage of registered nurses.

No comments were received.

The amendments are adopted under the Texas Education Code, Chapter 63, Subchapter C, §63.202, which provides the Coordinating Board with the authority to adopt rules to administer the 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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PART 2. TEXAS EDUCATION AGENCY CHAPTER 101. ASSESSMENT

SUBCHAPTER DD. COMMISSIONER'S
RULES CONCERNING SUBSTITUTE
ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

The Texas Education Agency (TEA) adopts an amendment to §101.4002, concerning end-of-course (EOC) substitute assessments for graduation. The amendment is adopted with changes to the proposed text as published in the October 11, 2019 issue of the *Texas Register* (44 TexReg 5857) and will be republished. The adopted amendment reflects changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019. The adopted amendment modifies the rule to align Texas assessment and accountability policies with federal requirements.

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

In December 2018, the U.S. Department of Education (USDE) issued an action item following a federal monitoring visit requiring Texas to cease the use of substitute assessments for accountability purposes. In March 2019, the TEA responded to the USDE asking for additional time to determine options for continuing this policy while remaining compliant with federal law. TEA has extensively explored options and determined that our state policy on substitute assessments cannot be successfully reconciled with federal accountability statute. As a result, beginning with the 2020 accountability cycle, substitute assessments will not be included in state or federal accountability calculations. Under the Elementary and Secondary Education Act of 1965 (ESEA), a state is required to adopt and administer the same academic assessments to measure the achievement of all public-school students in the state. Furthermore, states are required to include these assessment results in the accountability system.

As proposed, the amendment would have added subsection (c)(1) to require students to take an EOC assessment at least once for federal accountability purposes prior to being eligible to use a substitute assessment to meet graduation purposes. However, based on public comment, it was determined that the addition of subsection (c)(1) was not needed as the modified language in subsection (e) would be sufficient to fulfill federal testing and accountability requirements. Therefore, proposed new subsection (c)(1) has been removed at adoption and the existing subsection numbering has been reinstated.

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

The adopted amendment modifies the language in subsection (e) to require students to take an EOC assessment at least once for the purpose of federal accountability based on ESEA requirements. The adopted amendment also modifies the language in subsection (e) to remove the reference to "the substitute assess-

ment bubble" as that bubble is no longer included on answer documents for EOC assessments.

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

At proposal, the government growth assessment stated that the proposed rulemaking would decrease the overall number of individuals subject to the rule's applicability since more students would meet assessment graduation requirements with EOC assessments, which they would have had to take first under the proposed rule, instead of substitute assessments. However, since the provision requiring a student to take an EOC assessment at least once before being eligible to use a substitute assessment was removed from the rule at adoption, this government growth impact is no longer applicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 11, 2019, and ended November 12, 2019. A public hearing was held on December 10, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas School Alliance (TSA), Texans Advocating for Meaningful Student Assessment (TAMSA), and four individuals expressed support for retaining substitute assessments as an option to fulfill graduation requirements and the extension of the expiration date in the rule.

Response: The agency agrees.

Comment: TSA, TAMSA, and thirteen individuals commented that proposed new subsection (c)(1) is not needed as the proposed amendment to subsection (e) addresses federal accountability requirements.

Response: The agency agrees. The proposed inclusion of new subsection (c)(1) is not needed as the modified language in subsection (e) is sufficient to fulfill federal testing and accountability requirements. Therefore, the agency has modified subsection (c) at adoption to remove the proposed new paragraph (1) and reinstate the numbering for the existing paragraphs.

Comment: Mineral Wells Independent School District (ISD), TAMSA, and more than 50 individuals commented that the proposed amendment to this rule exceeds the authority of the commissioner of education and overrules the intent of the legislature in establishing the option of substitute assessments.

Response: The agency disagrees. TEC, §39.023(i), states that each assessment adopted must meet applicable federal requirements. Therefore, the change in federal requirements necessitated a change to administrative rule to align with federal requirements. TEC, §39.025(a), indicates that the commissioner must establish rules requiring a student to be administered an EOC assessment for a course in which the student is enrolled. The amendment to the rule clarifies the state and federal testing requirements for all students; however, it does not change the option of using substitute assessments to fulfill graduation requirements.

Comment: Mineral Wells ISD and sixteen individuals commented that the proposed amendment to this rule is evidence of undue influence of federal law and the agency on gradua-

tion requirements and could negatively impact the academic achievement of students.

Response: The agency disagrees. The amendment to this rule does not change state requirements for graduation and does not remove the option of using substitute assessments to fulfill graduation requirements for any students. The amendment only clarifies the state and federal testing requirements for all students.

Comment: Eleven individuals commented on their disapproval of the State of Texas Assessments of Academic Readiness (STAAR®) and the practice of standardized testing in general.

Response: The agency disagrees. STAAR® assessments are an important aspect of the state's educational accountability system as established by TEC, §39.023. STAAR® measures the extent to which a student has learned and is able to apply the knowledge and skills required to be taught.

Comment: An assessment provider commented that one of their assessment tools has been updated and that cut scores listed in the chart in subsection (b) may need to be adjusted in the near future.

Response: The agency agrees. The agency will make the necessary adjustments to the rule after the updates to the provider's assessment tool have been finalized.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.025(a), which requires the commissioner of education to adopt rules requiring students to achieve satisfactory performance on each EOC assessment listed under TEC, §39.023(c), in order to receive a Texas high school diploma; TEC, §39.025(a-1), (a-2), and (a-3), which allow for the use of specific substitute assessments to satisfy the EOC assessment graduation requirements under certain conditions; TEC, §39.025(a-3), as amended by Senate Bill 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to use the Texas Success Initiative assessment as a substitute assessment to meet graduation requirements. The expiration date changed from September 1, 2019, to September 1, 2023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B)(i) and (vii), which requires the same academic assessments to be used to measure the achievement of all public-school students in the state and all students must participate in the assessments with few exceptions (e.g., students with significant cognitive disabilities).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under the TEC, §39.023(c), at least once for federal accountability purposes. If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a substitute assessment.

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

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles adopts the repeal of §215.102, Representatives; amendments to §215.133, General Distinguishing Number; and new §215.161, Licensing Education Course Requirements. The department adopts amendments to §215.133 with a change to the proposed text as published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4462). A comma in §215.133(j)(1) was changed to a semicolon. New §215.161 is adopted with changes to the proposed text as published in the same issue of the *Texas Register*. Section 215.161(c) has been amended to reduce the minimum number of training hours required to 3 for renewal applicants not exempted from the training requirement. Sections 215.133 and 215.161 will be republished.

REASONED JUSTIFICATION. The repeal, amendments, and new section are necessary to implement statutory changes made by the 86th Legislature, Regular Session (2019) in House Bill (HB) 3842, HB 1667; and Senate Bill (SB) 604, 86th Legislature, Regular Session.

The repeal of §215.102, Representatives, implements SB 604, which eliminates the "representative" license.

Amended §215.133(a) implements Transportation Code §503.027(a), as amended by HB 3842. House Bill 3842 removed the exception under Transportation Code §503.027(a), that provided a dealer is not required to hold a general distinguishing number (GDN) for a location from which the dealer consigns five or fewer vehicles in a calendar year. The phrase "unless the consignment location is a wholesale motor vehicle auction" was added to conform to Transportation Code §503.027(a).

New §215.133(j) implements HB 1667. House Bill 1667 added Occupations Code §2302.009, and amended §2302.101, to provide that a person holding an independent motor vehicle GDN is exempt from the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or rebuilder, or store or display a motor vehicle as an agent or escrow agent of an insurance company.

New §215.133(k) implements SB 604 that added new Transportation Code §503.0296 to require an applicant for an original or renewal general distinguishing number complete web-based education and training developed or approved by the department. New §215.133(k) requires that a person must complete licensing training developed or approved by the department to be eligible for an independent motor vehicle GDN. Persons who have completed the required training will not have to retake the training for subsequent renewals. Persons who have held an independent motor vehicle distinguishing number for at least ten years as of September 1, 2019, are exempt from the licensing training requirement.

New §215.161, Licensing Education Course Requirements, implements SB 604 by adding licensing education course requirements applicable to course providers.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received 15 written comments. Dallas County Tax Assessor-Collector, Lubbock County Tax Assessor-Collector, Milam County Tax Assessor-Collector, Brewster County Tax Assessor-Collector, Denton County Tax Assessor-Collector, Lampasas County Tax Assessor-Collector, Zavala County Tax Assessor-Collector, El Paso County Tax Assessor-Collector, Scurry County Tax Assessor-Collector, Jackson County Tax Assessor-Collector, Lavaca County Tax Assessor-Collector, Comal County Tax Assessor-Collector, Grimes County Tax Assessor-Collector, the Tax Assessor-Collector Association of Texas, and the Texas Independent Automobile Dealers Association (TIADA) were in support of the proposal with changes.

Comment on §215.133(a). One commenter supports the clarifying amendment in which "a dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction."

Agency Response. The department thanks the commenter for its support.

Comment on §215.133(j). One commenter supports adoption of new section (j), which will allow an independent motor vehicle dealer to also act as a salvage dealer or rebuilder without the need for an additional license.

Agency Response. The department thanks the commenter for its support.

Comment on §215.133(k). One commenter supports new section (k), relating to educational requirements for persons or entities seeking to obtain a motor vehicle general distinguishing number license.

Agency Response. The department thanks the commenter for its support.

Comment on §215.133(k)(2). One commenter asks for clarification regarding subsection (k)(2) for persons or independent auto dealerships seeking renewal of a GDN license, but are not otherwise exempt (10 year). The commenter asks that a renewal license holder not be required to take the same class as

a prospective licensee as it is redundant. The commenter also requests that alternative curriculum be made available for approval by the Department that is narrower in scope and shorter in duration, for example 30 minutes to an hour.

Agency Response. The department agrees that current license holders with established businesses do not need training on how to set up a new dealership and do not need the same number of training hours as new applicants, but disagrees with changing the duration to 30 minutes to an hour. The department amended §215.161(c) in response to the comment to reduce the minimum requirement to 3 hours of training for renewal applicants not exempted from the training requirement.

Comment on §215.133(k)(2). One commenter requests that state motor vehicle trade associations be allowed to present renewal education or training opportunities with classroom equivalent if such classroom sessions are approved by the Department in advance.

Agency Response. The department declines to make the suggested change. Senate Bill 604, 86th Legislature, Regular Session (2019) provides that the department must require web-based education and training. Allowing renewal education or training opportunities to have a classroom equivalent would not be consistent with SB 604.

Comment on §215.161. Commenters offer support for proposed §215.161. Pre-licensing training has been an item long supported by many different parties, including County Tax Assessor-Collectors. By implementing this training, commenters believe the department will see a drop off in the number of dealers that obtain licenses for one year or less and close their doors because they are not prepared for the regulatory compliance requirements and responsibilities.

Agency Response. The department appreciates the supportive comment.

Comment on §215.161. A commenter supports the department offering pre-licensing educational training prior to the issuance of dealer licenses to ensure a proper knowledge base in the laws and regulations governing the motor vehicle industry. Protecting the public from deceptive business practices and other issues related to the motor vehicle industry is in the best interest of the motoring public as well as the tax assessor-collectors of Texas.

Agency Response. The department appreciates the supportive comment.

Comment on §215.161. Commenters request that the department work with the Auto Dealer Trade Associations and Tax Assessor-Collector Association of Texas to develop meaningful training that provides the best content possible for services performed and required by an independent motor vehicle dealer. Commenters request that the training include content on how dealers can work effectively with the county offices to title and register vehicles properly, accurately, and timely.

Agency Response. The department agrees that an important outcome of the training is educating potential and current license holders on how to work effectively with the county tax offices to efficiently and correctly process motor vehicle titles and registrations. The department will provide the County Tax Assessor-Collectors an opportunity to review the proposed training and provide feedback prior to department course approval.

Comment on §215.161. One commenter requested that the training include the proper processing of VTR-136 forms to ensure county taxes go to the buyer's choice of county.

Agency Response. The department agrees that this issue is an important one, especially to rural counties, and that topic will be included in the training.

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.102

STATUTORY AUTHORITY.

The repeal is adopted under Transportation Code §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of the Occupations Code Chapter 2301; under Transportation Code §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; under Occupations Code §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, empower, authorize, and require the board to adopt rules under Occupations Code Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

CROSS REFERENCE TO STATUTE. Transportation Code Chapter 1002.

§215.102. *Representatives.*

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

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.133, §215.161

STATUTORY AUTHORITY.

The amendments and new section are adopted under Transportation Code §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code Chapter 503; under

Transportation Code §1002.001, which requires and authorizes the department to administer and enforce the provisions of Occupations Code Chapter 2301; under Transportation Code §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; under Occupations Code §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, empower, authorize, and require the board to adopt rules under Occupations Code Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

CROSS REFERENCE TO STATUTE. Occupations Code §§2301.251, 2301.258, 2301.264, 2301.304, 2302.009 and §2302.101; and Transportation Code §503.027 and §503.0296.

§215.133. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. A dealer must also hold a general distinguishing number for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §215.135 of this subchapter (relating to More than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.

(c) Application for a general distinguishing number shall be on a form prescribed by the department properly completed by the applicant showing all information requested thereon and shall be submitted to the department accompanied by the following:

(1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond);

(2) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:

(A) current driver's license;

(B) current Department of Public Safety identification;

(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) current passport; or

(E) current United States armed forces identification.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.

(f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer license holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-a) and all information and records required under Transportation Code §503.0295.

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

(j) A person holding an independent motor vehicle general distinguishing number license does not have to hold a salvage dealer license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(k) To be eligible for an independent motor vehicle general distinguishing number license, a person must complete licensing training specified by the department, except as provided herein:

(1) once a person has completed the required training, the person will not have to retake the training for subsequent license renewals, but may be required to provide proof of training completion as part of the license renewal process; and

(2) a person holding an independent motor vehicle general distinguishing number license for at least 10 years as of September 1, 2019, is exempt from the licensing training requirement.

§215.161. Licensing Education Course Requirements.

(a) A motor vehicle dealer licensing education course provider must be a Texas institution of higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled in this state.

(b) The licensing education course must be approved by the department and must include information on the laws and rules applicable to motor vehicle dealers and the consequences of violating those laws and rules.

(c) The licensing education course must consist of at least 6 hours of online instruction for new applicants and 3 hours of online instruction for renewal applicants.

(d) The cost for the licensing education course must not exceed \$150 per person. A trade association course provider may not charge a different rate to a nonmember.

(e) The course provider must issue a certificate of completion to each person who successfully completes the licensing education course.

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

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles adopts amendments to 43 TAC §§217.2, 217.45, and 217.46, concerning the definitions of moped, off-highway vehicle, sand rail, and utility vehicle or UTV; unregistered off-highway vehicle license plates and the fee for the license plates; and disabled veteran and other license plates for custom vehicles, street rods and certain exhibition vehicles. The department adopts amendments to §§217.2, 217.45, and 217.46 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4667). These rules will not be republished.

REASONED JUSTIFICATION. The amendments to §§217.2, 217.45, and 217.46, are necessary to implement House Bill (HB) 1548 86th Legislature, Regular Session (2019); HB 1755, 86th Legislature, Regular Session (2019); HB 3068, 86th Legislature, Regular Session (2019); and HB 3171, 86th Legislature, Regular Session (2019).

The amendments to §217.2 are necessary to implement HB 1548, HB 1755, and HB 3171. House Bill 1548 transferred Transportation Code Chapter 663, Subchapters A and B, to new Transportation Code Chapter 551A. House Bill 1548 amended the definition of "motor vehicle" in Transportation Code §501.002 by adding a reference to "off-highway vehicle" as defined by Transportation Code §551A.001 and eliminating the references to "all-terrain vehicle" and "recreational off-highway vehicle." Transportation Code §551A.001 as added by HB 1548 defines "off-highway vehicle" as an all-terrain vehicle, recreational off-highway vehicle, or utility vehicle.

House Bill 1755 amended Transportation Code §663.001 to add a definition of "sand rail," and also amended the Transportation Code §663.001 definition of "off-highway vehicle" to include the term sand rail. The HB 1755 definition of sand rail and the amended definition of off-highway vehicle were also transferred by HB 1548 to Transportation Code §551A.001. As a result of HB 1548 and HB 1755, an off-highway vehicle under Transportation Code §551A.001 is defined as an all-terrain vehicle, recreational off-highway vehicle, utility vehicle, or sand rail.

In addition, HB 3171 amended the Transportation Code §541.201 definition of "moped" to state that a moped is a motor vehicle.

Because of the described statutory changes in HB 1548, HB 1755, and HB 3171, the amendments to §217.2 make necessary updates to statutory references in the definitions of "all-terrain vehicle" and "recreational off-highway vehicle," and add new definitions of "off-highway vehicle," "utility vehicle," and "sand rail" by reference to the definitions in Transportation Code §551A.001. In addition, the phrase "a motor vehicle as defined by" is added to the definitions of moped, off-highway vehicle, sand rail, and utility vehicle or UTV, under amended §217.2(14), (18), (22), and (25), for consistency with existing definitions of "all-terrain vehicle or ATV" and "recreational off-highway vehicle or ROV" and because the statutory definition of "motor vehicle" under Transportation Code §501.002, as amended, includes a moped and an off-highway vehicle. The definition of utility vehicle or UTV also references definition of "golf cart," which HB 1548 moved from Transportation Code §502.001 to Transportation Code §551.401. Amendments to §217.2 also renumber the paragraphs.

The amendments to §217.45 are necessary to implement HB 1548 and HB 3068. House Bill 1548 requires the department to establish, by rule, a procedure for issuance of license plates to golf carts and unregistered off-highway vehicles, and authorizes

the department to charge a fee of up to \$10 to cover the costs of issuing the plates. The phrase "off-highway vehicle" is defined in Transportation Code §551A.001, under HB 1548 as discussed in this adoption.

House Bill 3068 provides, in part, that a person who qualifies for a disabled veteran license plate under Transportation Code §504.202 may use an embossed Texas disabled veteran license plate on a classic motor vehicle, custom vehicle, street rod, and on certain exhibition vehicles as defined by Transportation Code §504.501 and §504.502. The embossed disabled veteran license plate must have been issued in the same year as the model year of the vehicle and be approved for use by the department. House Bill 3068 also provides that any person may use a Texas license plate that is embossed with an alphanumeric pattern of a plate design that was issued the same year as the model year of the vehicle for vehicles that meet the requirements of the same two sections (Transportation Code §504.501 and §504.502).

The amendments to §217.45 make necessary updates to implement HB 1548. The amendment to §217.45(a) adds a reference to new Transportation Code Chapter 551A as added by HB 1548.

The amendment to §217.45(c)(3)(B) adds the phrase "off-highway vehicle," because Transportation Code §551A.052 authorizes the department to establish a procedure to issue license plates to unregistered off-highway vehicles by rule. In addition, Transportation Code §551A.052(b) allows a person to operate an unregistered off-highway vehicle on a highway in a manner authorized by Transportation Code Chapter 551A, Subchapter D, only if the vehicle displays a license plate issued under Transportation Code §551A.052. The existing requirement in §217.27(b) that a vehicle display two license plates is applicable to vehicles registered under Transportation Code Chapter 502.

The amendment to §217.45(c)(7)(E) adds the phrase "off-highway vehicle," because license plates for off-highway vehicles are authorized by Transportation Code Chapter 551. Personalized license plates are authorized by Transportation Code §504.0051 and §504.101. As such, license plates for off-highway vehicles are not eligible for personalization.

The amendment to §217.45(c)(7)(E) adds the phrase "off-highway vehicle," because under Transportation Code §551A.052(d), off-highway vehicle license plates are only authorized for off-highway vehicles, do not expire, and may not be used by a subsequent owner of an off-highway vehicle. In addition, license plates are only eligible for transfer if the vehicle is a passenger vehicle with a gross weight of 6,000 pounds or less or a light truck with a gross weight of 10,000 pounds or less. Passenger vehicles and light trucks are defined in Transportation Code §502.001 by reference to Transportation Code §541.201.

The amendments to §217.45 also add new §217.45(k) to establish the process by which a county tax assessor-collector may issue an off-highway vehicle license plate and sets the fee for an off-highway vehicle license plate. The fee for an off-highway license plate is \$10, which is the same fee charged for a license plate for a golf cart under existing §217.45(j). This fee is appropriate because the standard cost for the department to produce a license plate is \$8. However, this cost does not include programming and the cost of the receipt. Setting the fee at \$10 will account for all costs associated with issuance of the plate.

The amendments to §217.45 make necessary updates to implement HB 3068. The amendment to §217.45(c)(2)(A)(ii) cre-

ates an exception that will allow the use of disabled veteran embossed license plates on classic motor vehicles, custom vehicles, street rods, and certain exhibition vehicles by a disabled veteran as authorized in Transportation Code §504.202.

The amendment to §217.46 is necessary to implement HB 3171, which amended the definition of "commercial motor vehicle" in Transportation Code §502.001(7) to exclude "moped." The amendment to §217.46(a) adds a reference to moped for consistency with Transportation Code §502.001(7) as amended by House Bill 3171.

Additionally, the department adopts nonsubstantive changes throughout the text of §§217.2, 217.45, and 217.46. These nonsubstantive changes include reformatting and updating citations.

In conjunction with amending these rules, the department is also reconfiguring its internal systems. Therefore, the effective dates of the rules may be extended to correspond with completion of the programming necessary to fully implement the rules.

SUMMARY OF COMMENTS.

No comments on the amendments were received.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.2

STATUTORY AUTHORITY. The department adopts amendments to §217.2 under Transportation Code §§501.0041, 502.0021, 504.0011 and 1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code §504.0011 authorizes the board of the Texas Department of Motor Vehicles to adopt rules to implement and administer Chapter 504.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.002, 502.001, 542.201, 551.401, and 551A.001.

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

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.45, §217.46

STATUTORY AUTHORITY. The department adopts amendments to §217.45 and §217.46 under Transportation Code §§501.0041, 502.0021, 504.0011, 504.002, 551.402, 551A.052, and 1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code §504.0011 authorizes the board of the Texas Department of Motor Vehicles to adopt rules to implement and administer Chapter 504.

Transportation Code §504.002 authorizes the department to charge a fee to cover the costs of issuing license plates for golf carts or off-highway vehicles in an amount established by rule.

Transportation Code §551.402 requires the department to adopt rules establishing a procedure to issue license plates for golf carts and charge a fee not to exceed \$10.

Transportation Code §551A.052 requires the department to adopt rules establishing a procedure to issue license plates for unregistered off-highway vehicles and charge a fee not to exceed \$10.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.002, 502.001, 504.202, 504.202, 504.501, 541.201, 542.201, 551.401, 551.402, and 551A.052.

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles adopts new 43 TAC §217.16 and an amendment to 43 TAC §217.40 concerning applications for title when a dealer goes out of business. The department adopts new §217.16 and the amendment to §217.40 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4680). These rules will not be republished.

REASONED JUSTIFICATION. The new §217.16 and amendment to §217.40 are necessary to implement House Bill 3842, 86th Legislature, Regular Session (2019). House Bill 3842 requires the department to adopt rules to permit a person to apply

for title if an out of business dealer failed to apply for title as required by Transportation Code, §501.0234. House Bill 3842 also authorizes the department to waive fees for a title, if the purchaser can show that fees for a title were paid to the dealer, and the fee for one 30-day permit.

The new §217.16 is necessary to implement HB 3842. Section 217.16(a) establishes the process for a person to apply for a title if the person purchased a vehicle from a dealer who is required to apply for title, but did not because the dealer went out of business. Section 217.16(b) provides that a dealer is considered out of business if the dealer's license has been closed or has expired, or if operations have ceased at the licensed location as determined by the department. Section 217.16(c) is necessary to allow a person to obtain a letter on department letterhead stating the dealer has gone out of business. The purpose of the letter is to confirm the dealer is out of business, regardless of whether the dealer's license has closed or expired or operations have ceased at the licensed location as determined by the department, and authorize a county tax assessor-collector to waive fees in accordance with §217.16(f). A purchaser may request the letter by contacting the department, including a Regional Service Center, or a county tax assessor-collector's office by email, phone, or in-person. The department also has an online complaint entry system for the public that provides status updates on the submitted complaint that may be used to request the letter. The department may be contacted directly weekdays between 8:00 a.m. and 4:30 p.m. at (888) 368-4689 for questions regarding a complaint submission, or a customer may go into the online system to find out the status of the submission. Additionally, once the department is made aware of a dealer closure through an initial customer's request for a letter, individuals requesting a letter could receive a letter very quickly as subsequent requests would not require additional research on the dealer. The department's Regional Service Center staff will coordinate issuance of the letter to the customer. Section 217.16(d) requires an applicant to comply with all requirements for title application under §217.4, Initial Application for Title, except that an applicant may provide either the sales contract, retail installment agreement, or buyer's order in lieu of the assigned manufacturer's certificate of origin or title required under §217.5(a), Evidence of Motor Vehicle Ownership. The applicant must also provide the letter stating the dealer has gone out of business, but is not required to provide a release of lien if the only recorded lienholder is the dealer that has gone out of business. The applicant will have their transaction completed at the county tax assessor-collector's office at the time they submit their application if the proper documentation is presented. Section 217.16(e) provides that a title application under the new section must include a properly completed odometer disclosure statement, if applicable, or the odometer brand will be recorded as "NOT ACTUAL MILEAGE." Lastly, §217.16(f) provides that the department will waive the title application fee, the delinquent transfer penalty, all fees under Transportation Code, Chapter 502, and the buyer's temporary tag fee.

The amendment to §217.40 is necessary to implement HB 3842. The amendment to §217.40 allows for waiver of the fee for one 30-day permit if the applicant is exempt from payment of fees under Transportation Code, §501.0236, and provides the letter on department letterhead stating the dealer has gone out of business.

SUMMARY OF COMMENTS.

No comments were received.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.16

STATUTORY AUTHORITY. The department adopts new §217.16 under Transportation Code, §§501.0236(f), 502.401(g), 502.402(f), 520.003, and 1002.001.

Transportation Code, §501.0236(f) requires the department to adopt rules necessary to implement the section.

Transportation Code, §502.401(g) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section. Transportation Code, §502.402(f) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section.

Transportation Code, §520.003 allows the department to adopt rules to administer Transportation Code, Chapter 520, including rules that waive the payment of fees if a dealer has gone out of business and the applicant can show that fees were paid to the dealer.

Transportation Code, §1002.001 authorizes the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 501, 502, 503, and §520.003.

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.40

STATUTORY AUTHORITY. The department adopts the amendment to §217.40 under Transportation Code, §§501.0236(f), 502.401(g), 502.402(f), 520.003, and 1002.001.

Transportation Code, §501.0236(f) requires the department to adopt rules necessary to implement the section.

Transportation Code, §502.401(g) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section. Transportation Code, §502.402(f) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section.

Transportation Code, §520.003 allows the department to adopt rules to administer Transportation Code, Chapter 520, including rules that waive the payment of fees if a dealer has gone out of

business and the applicant can show that fees were paid to the dealer.

Transportation Code, §1002.001 authorizes the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 501, 502, 503, and §520.003.

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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Tracey Beaver

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Texas Department of Motor Vehicles

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §§217.76 - 217.78

The Texas Department of Motor Vehicles adopts new sections to 43 TAC Subchapter C, Registration and Title Systems, §§217.76 - 217.78, concerning access to the department's automated registration and titling system (RTS), including suspension and denial. The new sections are necessary to implement Transportation Code, §520.021 and §520.022, as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the RTS and Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS. The department adopts the new sections with changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 6018). The department has revised typographical errors in §§217.76 - 217.78. These rules will be republished.

The department has also adopted new 43 TAC §§223.1 - 223.3, concerning the department's "red flag" fraud reporting system in this issue of the *Texas Register*.

REASONED JUSTIFICATION. Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS. The department interprets SB 604, Section 4.07, as requiring the department to identify the types of suspected activity that will result in suspension or denial. The types of suspected activity are stated in proposed §217.76. Suspension and denial are addressed in proposed §217.77. Reinstatement is addressed in §217.78.

Section 217.76 is also necessary to implement SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors, and in accordance with Subchapter C, Chapter 520, Transportation Code, as added, to develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to RTS if

a county tax assessor-collector suspects fraud, waste, or abuse relating to RTS by a county tax assessor-collector employee or a person deputized under Transportation Code, §520.0071. As part of the coordination process with county tax assessor-collectors, on August 20, 2019, the department provided draft language for proposed §217.76 to the Tax Assessor-Collectors Association of Texas (TACA) and the TxDMV county tax assessor-collector Liaison. The proposal incorporated comments received.

Proposed §217.76(a) establishes that §§217.76 - 217.78 apply to individuals, other than department employees, and entities, with RTS access. The sections do not apply to department employees because their access, and denial of access, is at the will of the department. Stating that the sections do not apply to them clarifies that the sections do not create procedures or requirements related to RTS access, suspension, or denial, for a department employee. The reference to entities includes only entities with RTS access.

Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS. As stated, prior to proposal the department provided draft criteria to TACA and county tax assessor-collectors as part of the SB 604, Section 4.07, coordination process. After reviewing comments received from TACA and county tax assessor-collectors, the department modified the draft text to require a reasonable suspicion and added the sources of information that could validate that suspicion. A reasonable suspicion standard is consistent with the "suspects" language in SB 604, Section 4.07. Requiring a final determination or knowing conduct would not be consistent with the legislative instruction.

In addition, the department's draft of the criteria for the suspension or denial of access to RTS provided to TACA and county tax assessor-collectors for review listed "a crime of moral turpitude." The draft further defined "a crime of moral turpitude" to include reasonable suspicion of misappropriation of money, falsification of government records, or a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects poorly on the person's honesty or trustworthiness. Based on feedback received from TACA and the county tax assessor-collector commenters, the department kept the listed types of criminal activity and removed the term "a crime of moral turpitude."

Section 217.76(b)(2) also provides that the department may suspend or deny access to RTS based on a demonstration of non-compliance with applicable statutes and rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section 217.76(c) lists the types of acceptable forms of information that can be used to support a reasonable suspicion.

Proposed §217.77(a) clarifies that the executive director or the executive director's designee has sole authority to determine access to RTS, determine if information exists to support a reasonable suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on Transportation Code, §520.022. Proposed §217.77(b) provides that a county tax assessor-collector may request the executive director or the executive director's designee immediately suspend a county employee or full service deputy's access to RTS based on the same criteria. Although not a criterion, TACA and county tax assessor-collector commenters in the SB 604, Section 4.07, coordination process suggested including a notice, such as the notice set forth in the current §217.163 addendum. Proposed §217.77(c) incorporates the existing notice provision from the addendum into the rule,

with modifications to refer to an exception for federal law enforcement, a request for immediate termination by the county tax assessor-collector, and for differences in style between the proposal and the addendum.

The department has changed §217.77(b) to correct a typographical error by changing the word "employee" to "employee's" for consistency with other uses in the text. The change does not add additional costs or affect persons not on notice of the proposed rules.

TACA and county tax assessor-collector commenters in the coordination process also suggested the need for a reinstatement process. Proposed §217.78(a) incorporates the addendum reinstatement process which was agreed upon after negotiation between the county tax assessor-collectors and the department. The process has been modified to reflect that it applies to individuals in addition to entities, and to correct differences in style between the rule and the addendum. Proposed §217.78(b) provides that access to RTS may be reinstated if the person whose access has been suspended is not the subject of a pending criminal investigation by a law enforcement entity. Access may be reinstated if the department determines no fraud, waste, or abuse was committed; the matter has been remedied to the satisfaction of the department; or the person is in compliance with applicable statutes or rules.

The department has changed §217.78(b) to correct a typographical error by changing the word "individual" to "individual's" for consistency with other uses in the text. The change does not add additional costs or affect persons not on notice of the proposed rules.

SUMMARY OF COMMENTS.

The department received written comments on the proposal from the Tax Assessor-Collectors Association of Texas (TACA), on behalf of its board and 254 county tax assessor-collector members.

General Comments

The commenter supports the rules provided that a county tax assessor-collector retains the ability to manage their employees and full service deputies pursuant to both department rules and county policies/provisions.

Response. The department agrees with the comment. The rules address only suspension of employees and full service deputies from RTS system access based on suspicion of fraud, waste, or abuse as provided in the adopted sections.

The commenter also asks for confirmation that a county tax assessor-collector may submit a request to the department to deny an employee or full service deputy access to the RTS system if the county tax assessor-collector believes, suspects, or finds that the employee or full service deputy is in violation of or acting against the statutes, rules or procedures set forth by the department or by the tax assessor collector.

Response. The department agrees with the comment. The adopted sections do not impose a duty on a county tax assessor-collector to allow, or continue to allow, an employee or full service deputy to have access to the RTS system. A county tax assessor-collector may submit a request to the department to deny an employee or full service deputy access to the RTS system for any reason, including reasons of fraud, waste, and abuse set forth in §217.76. The purpose of the rules is to provide criteria and a procedure for the department to suspend a county tax

assessor-collector employee's or full service deputy's access to the RTS system based on reasons of fraud, waste, and abuse.

STATUTORY AUTHORITY. The department adopts new §§217.76 - 217.78 under SB 604, Section 4.06, and Transportation Code, §520.021 and §1002.001.

Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to the department's automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse relating to the system by an employee of the tax assessor-collector's or a person deputized under Transportation Code, §520.0071.

Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, §520.021.

§217.76. Criteria for Suspension or Denial of Access to RTS.

(a) Sections 217.77, 217.78, and this section apply to individuals, other than department employees, and entities, with RTS access.

(b) The department may suspend or deny any individual user's or entity's access to RTS if:

(1) information exists to support a reasonable suspicion that the individual or entity is committing fraud, waste, or abuse related to RTS, including:

- (A) misappropriation of money;
- (B) falsification of government records; or
- (C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects poorly on the individual's honesty or trustworthiness; or

(2) the individual or entity demonstrates non-compliance with applicable statutes and rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520.

(c) Acceptable forms of information that can support a reasonable suspicion include:

- (1) information gathered in an audit under Transportation Code, §520.010 or §520.011;
- (2) a request to suspend or deny the individual or entity access from a county tax assessor-collector;
- (3) review of transactions processed by the individual or entity; and
- (4) oral or written information or complaints from:
 - (A) a law enforcement agency;
 - (B) another government agency;
 - (C) an association or trade group;

(D) an entity; or

(E) an identifiable individual.

§217.77. Process for Suspension or Denial of Access to RTS.

(a) The executive director or the executive director's designee has sole authority to:

- (1) determine access to RTS;
- (2) determine that information exists to support a reasonable suspicion that the individual or entity is committing fraud, waste, or abuse related to RTS; and
- (3) suspend or deny the individual's or entity's access to RTS, based on the criteria in §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

(b) A county tax assessor-collector may request the executive director or the executive director's designee immediately suspend a county employee's or full service deputy's access to RTS based on the criteria in §217.76 of this title.

(c) The department shall inform the county tax assessor-collector before taking action to suspend or deny the individual's or entity's access to RTS under subsection (a) of this section, unless:

- (1) the action is as a result of a court order;
- (2) time is of the essence;
- (3) revealing this action would detrimentally interfere with or compromise an active investigation by the department or an enforcement agency of this state or the federal government; or
- (4) the action is based on the county tax collector-assessor's request in subsection (b) of this section.

§217.78. Reinstatement of Access to RTS.

(a) A county tax assessor-collector may request a review of a decision to suspend or terminate RTS access by submitting a request for reinstatement in writing to the department.

(1) The request for reinstatement should include all supporting information that is relevant to support reinstatement.

(2) A county tax assessor-collector may submit information in support of or relevant to a request for reinstatement to the department.

(3) The executive director shall make a final determination on reinstatement within 21 calendar days from the date the department receives the request for reinstatement. If the department requests additional information from the individual, entity, or county tax assessor-collector, the deadline for determination of the request for reinstatement is tolled until the additional information is received.

(b) Unless an individual or entity is the subject of a pending criminal investigation by a law enforcement entity, the individual's or entity's access to RTS will be reinstated if the department determines that:

- (1) no fraud, waste, or abuse was committed;
- (2) the matter has been remedied to the satisfaction of the department; or
- (3) the individual or entity is in compliance with applicable statutes and rules.

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

Filed with the Office of the Secretary of State on February 10, 2020.

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Tracey Beaver

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



CHAPTER 223. COMPLIANCE AND INVESTIGATIONS DIVISION

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1 - 223.3

The Texas Department of Motor Vehicles adopts new Chapter 223, Compliance and Investigations Division, Subchapter A., Fraud, Waste, or Abuse, 43 TAC §§223.1 - 223.3, concerning the department's "red flag" fraud reporting system. The new sections are necessary to formalize the department's current "red flag" fraud reporting system and implement a management action within the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The department adopts new Chapter 223 without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 6021). These rules will not be republished.

The department also adopts new 43 TAC §§217.76-217.78, concerning access to the department's automated registration and title system (RTS) in this issue of the *Texas Register*.

REASONED JUSTIFICATION. The department originally proposed new Chapter 223 in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1114) and received comments from the Tax Assessor-Collector Association of Texas (TACA). The department did not adopt the proposal and it was withdrawn in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5387). The department incorporated the prior comments received on the March 1, 2019, published proposal in the October 18, 2019, proposal.

Because the adopted sections were developed over two proposals, the department refers to comments received on each proposal in this Reasoned Justification section. Only comments received on the October 18, 2019, proposal are listed, addressed, and responded to in the Summary of Comments section.

The Tax Assessor-Collectors Association of Texas (TACA) commented that the March 1, 2019, proposal was inconsistent with the Sunset recommendation. TACA also suggested that the department's CID investigation and notification process mirror the dealer enforcement complaint process, because that process works well with cross communication and access to investigations. Some changes were made based on the comments received and to further improve the rules.

However, the adopted rules do not mirror the department's dealer enforcement complaint process. Throughout the dealer investigation and enforcement process, investigators and enforcement attorneys communicate with the complainant and

respondent as necessary to work through allegations to either resolve the issues or assess civil penalties. The CID, on the other hand, is a unique division with no authority or duty to determine administrative violations or assess civil penalties.

As addressed in the response to comments, the CID will try to work in partnership with county tax assessor-collectors. However, the CID may not be able to provide status updates for ongoing investigations. The CID serves as a liaison with law enforcement entities on potential criminal law violations and has no authority to independently enforce or prosecute criminal law violations. Sharing information regarding an ongoing criminal investigation could jeopardize the investigation and damage the CID's working relationship with law enforcement.

Every person processing registration and title transactions in RTS has a duty to stop or prevent fraud, waste, or abuse. The adopted "red flag" rules provide a means for county tax assessor-collectors to flag and report suspected fraud, waste, or abuse to the CID. As addressed in the response to comments, the adopted sections are based on the county tax assessor-collectors having continued management and control of county employees and deputies, and do not limit or expand the exercise of statutory authority of a county tax assessor-collector or the department.

Adopted §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the policies and procedures for county tax assessor-collectors, including county tax assessor-collector employees and deputies, to report suspected fraud, waste, or abuse, related to motor vehicle titling and registration to the CID for investigation.

Adopted §223.2 establishes that the words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise. The adopted section also defines terms specific to this subchapter.

Adopted §223.3 establishes the process for requesting rejection of a possible fraudulent transaction and reporting suspected possible fraud, waste, or abuse to the CID. The section does not require the county tax assessor-collector to make a request or submit information. However, submitting information to the CID is a means to work in partnership with the CID to stop or prevent fraud, waste, or abuse, and serve the motoring public.

Under §223.3, a county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or with the county, may submit a request for rejection of the suspected fraudulent transaction. The county tax assessor-collector must submit the request through a department Regional Service Center and mail, or e-mail, certain information to the CID, including the original transaction, a detailed narrative, and any supporting documentation or evidence. Adopted §223.3 requires a full service deputy to report suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit the full service deputy's information to the CID using the process in §223.3.

Section 223.3 also establishes that the CID will provide notification to the county tax assessor-collector if it determines it will not conduct an investigation. As addressed in response to comments and this Reasoned Justification section, the CID may not be able to provide additional information.

SUMMARY OF COMMENTS. The department received written comments on the proposal from the Tax Assessor-Collectors Association of Texas (TACA), on behalf of its board and 254 county tax assessor-collector members.

General Comment

The commenter strongly supports all measures to ensure the motoring public is protected while ensuring the county tax assessor-collectors have management control of their employees and full service deputies.

Response. The department appreciates the commenter's support. The purpose of the adopted section is to provide a process for county tax assessor collectors to report suspected fraud, waste, or abuse to the CID so that county tax assessor-collectors and the CID can work together to stop or prevent it. The adopted sections are based on the county tax assessor-collector having continued management and control of their employees and deputies. It is the county tax assessor-collector's decision to make the report. The adopted sections do not limit or expand the exercise of statutory authority of a county tax assessor-collector or the department.

Section 223.3 Comments

The commenter requests confirmation that §223.3 does not require a county tax assessor collector to submit a request to the CID that a suspected fraudulent transaction be rejected or otherwise report on suspected fraud, waste, or abuse to the CID.

Response. The department agrees with the comment. Section 223.3 establishes the process for requesting rejection of a possible fraudulent transaction and reporting suspected possible fraud, waste, or abuse, to the CID. The section does not require the county tax assessor-collector to make a request or report information. Submitting information to the CID is a means to work in partnership with the CID to stop or prevent fraud, waste, or abuse, and serve the motoring public as emphasized by the commenter.

The commenter requests that the CID provide county tax assessor-collectors updated status on investigations every 60 days in order to combat the possibility of issuing titles erroneously.

Response. The department agrees with the comment. The CID will try to work in partnership with county tax assessor-collectors.

However, the CID may not be able to provide status updates for ongoing investigations. The CID serves as a liaison with law enforcement entities on potential criminal law violations and has no authority to independently enforce or prosecute criminal law violations. Sharing information regarding an ongoing criminal investigation could jeopardize the investigation and damage the CIDs working relationship with law enforcement.

STATUTORY AUTHORITY. The department adopts new §§223.1-223.3 under Transportation Code, §§501.0041, 502.0021, 520.021, and 1002.001.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code, §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code, §520.021 authorizes department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 501, 502, and 520; and more specifically, Transportation Code, §501.003 and §520.022.

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

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Texas Department of Motor Vehicles

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For further information, please call: (512) 564-5665





TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 412, Local Mental Health Authority Responsibilities, Subchapters G and P, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, Subchapters G and F.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 412, Subchapters G and P

TRD-202000439



Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 412, Local Mental Health Authority Responsibilities, Subchapters G and P, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, Subchapters G and F.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 412, Subchapters G and P

TRD-202000442

Figure: 25 TAC Chapter 412, Subchapters G and P

Current Rules	Move to
Title 25. Health Services	Title 26. Health and Human Services
Part 1. Department of State Health Services	Part 1. Texas Health and Human Services Commission
Chapter 412. Local Mental Health Authority Responsibilities	Chapter 301. IDD-BH Contractor Administrative Functions
Subchapter G. Mental Health Community Services Standards	Subchapter G. Mental Health Community Services Standards
Division 1. General Provisions	Division 1. General Provisions
§412.301. Purpose and Application.	§301.301 Purpose and Application.
§412.303. Definitions.	§301.303 Definitions.
§412.304. Responsibility for Compliance.	§301.305 Responsibility for Compliance.
Division 2. Organizational Standards	Division 2. Organizational Standards
§412.311. Leadership.	§301.321 Leadership.
§412.312. Environment of Care and Safety.	§301.323 Environment of Care and Safety.
§412.313. Rights and Protection.	§301.325 Rights and Protection.
§412.314. Access to Mental Health Community Services.	§301.327 Access to Mental Health Community Services.
§412.315. Medical Records System.	§301.329 Medical Records System.
§412.316. Competency and Credentialing.	§301.331 Competency and Credentialing.
§412.317. Quality Management.	§301.333 Quality Management.
§412.318. Utilization Management.	§301.335 Utilization Management.
Division 3. Standards of Care	Division 3. Standards of Care
§412.321. Crisis Services.	§301.351 Crisis Services.
§412.322. Provider Responsibilities for Treatment Planning and Service Authorization.	§301.353 Provider Responsibilities for Treatment Planning and Service Authorization.
§412.323. Medication Services.	§301.355 Medication Services.
§412.324. Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents.	§301.357 Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents.
§412.325. Telemedicine Services.	§301.359 Telemedicine Services.
§412.326. Documentation of Service Provision.	§301.361 Documentation of Service Provision.
§412.327 Supervision.	§301.363 Supervision.
Subchapter P. Provider Network Development	Subchapter F. Provider Network Development
§412.751. Purpose.	§301.251 Purpose.
§412.752. Application.	§301.253 Application.
§412.753. Definitions.	§301.255 Definitions.
§412.754. Local Network Development.	§301.257 Local Network Development.
§412.755. Conditions Permitting LMHA Service Delivery.	§301.259 Conditions Permitting LMHA Service Delivery.

§412.756. Department Website.	§301.261. Department Website.
§412.757. Network Development Evaluation.	§301.263. Network Development Evaluation.
§412.758. Content of the Plan.	§301.265. Content of the Plan.
§412.759. Public Comment.	§301.267. Public Comment.
§412.760. Plan Approval and Implementation.	§301.269. Plan Approval and Implementation.
§412.761. Procurement.	§301.271. Procurement.
§412.762. Post Procurement Report.	§301.273. Post Procurement Report.
§412.763. Appeals.	§301.275. Appeals.
§412.764. Individual Selection of Providers.	§301.277. Individual Selection of Providers.



Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 416, Mental Health Community-Based Services, Subchapter A, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 306, Behavioral Health Delivery System, Subchapter F.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 416, Subchapter A

TRD-202000440



Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 416, Mental Health Community-Based Services, Subchapter A, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 306, Behavioral Health Delivery System, Subchapter F.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 416, Subchapter A

TRD-202000443

Figure: 25 TAC Chapter 412, Subchapter A

Current Rules	Move to
Title 25. Health Services	Title 26. Health and Human Services
Part 1. Department of State Health Services	Part 1. Texas Health and Human Services Commission
Chapter 416. Mental Health Community-Based Services	Chapter 306. Behavioral Health Delivery System
Subchapter A. Mental Health Rehabilitative Services	Subchapter F. Mental Health Rehabilitative Services
§416.1. Purpose.	§306.301. Purpose.
§416.2. Application.	§306.303. Application.
§416.3. Definitions.	§306.305. Definitions.
§416.4. General Requirements for Providers of MH Rehabilitative Services.	§306.307. General Requirements for Providers of MH Rehabilitative Services.
§416.5. Eligibility.	§306.309. Eligibility.
§416.6. Service Authorization and Recovery Plan.	§306.311. Service Authorization and Recovery Plan.
§416.7. Crisis Intervention Services.	§306.313. Crisis Intervention Services.
§416.8. Medication Training and Support Services.	§306.315. Medication Training and Support Services.
§416.9. Psychosocial Rehabilitative Services.	§306.317. Psychosocial Rehabilitative Services.
§416.10. Skills Training and Development Services.	§306.319. Skills Training and Development Services.
§416.11. Day Programs for Acute Needs.	§306.321. Day Programs for Acute Needs.
§416.12. Documentation Requirements.	§306.323. Documentation Requirements.
§416.13. Staff Member Competency and Training.	§306.325. Staff Member Competency and Training.
§416.14. Medicaid Reimbursement.	§306.327. Medicaid Reimbursement.
§416.15. Medicaid Provider Participation Requirements.	§306.329. Medicaid Provider Participation Requirements.
§416.16. Fair Hearings and Reviews.	§306.331. Fair Hearings and Reviews.
§416.17. Guidelines.	§306.333. Guidelines.

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Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 447, Department-Funded Substance Abuse Programs, that are related to these transferred functions are being transferred to

HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 321, Substance Use Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 447, Subchapters A, B, and C
TRD-202000441

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Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 447, Department-Funded Substance Abuse Programs, that are related to these transferred functions are being transferred to

HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 321, Substance Use Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2020.

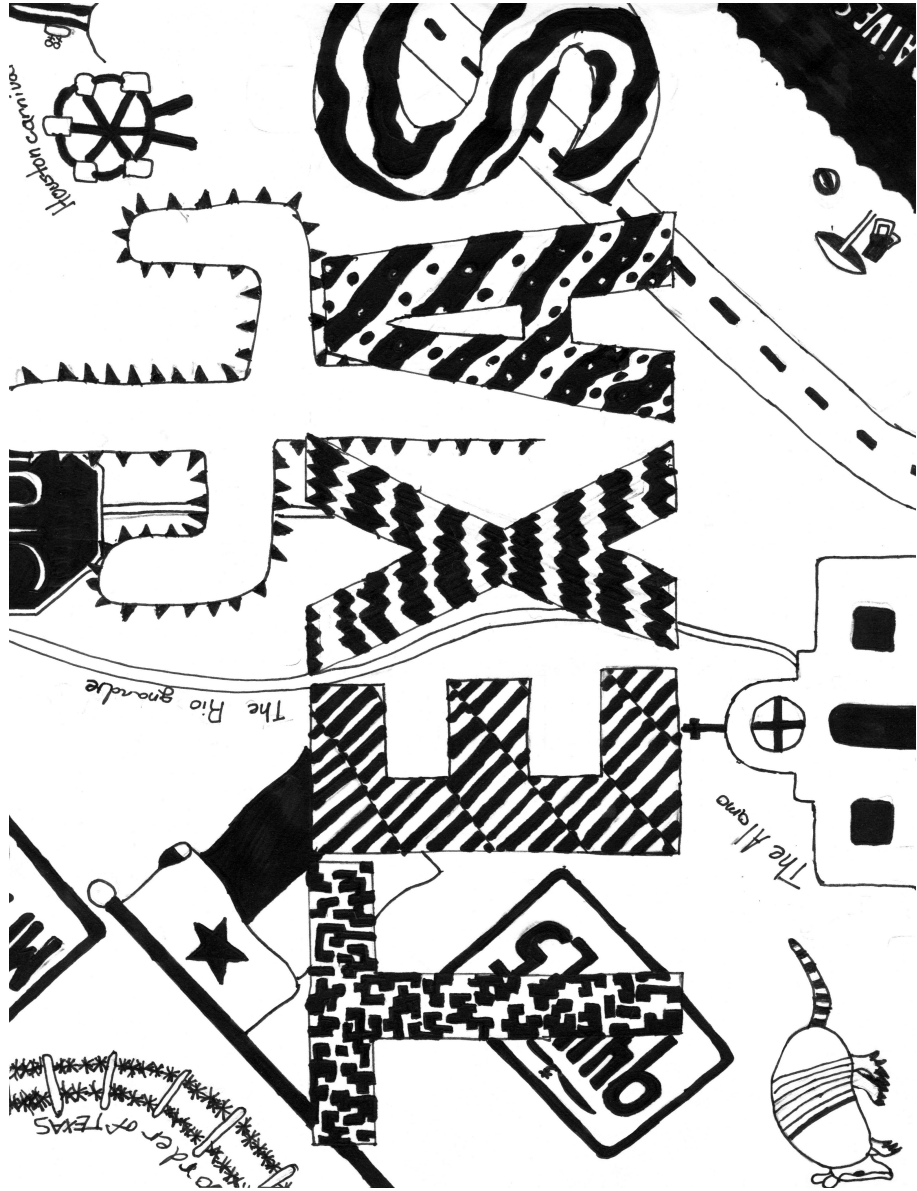
The following table outlines the rule transfer:

Figure: 25 TAC Chapter 447, Subchapters A, B, and C
TRD-202000444

Figure: 25 TAC Chapter 447, Subchapters A, B, and C

Current Rules	Move to
Title 25. Health Services	Title 26. Health and Human Services
Part 1. Department of State Health Services	Part 1. Texas Health and Human Services Commission
Chapter 447. Department-Funded Substance Abuse Programs	Chapter 321. Substance Use Services
Subchapter A. Prevention	Subchapter A. Prevention
§447.101. Purpose.	§321.1. Purpose.
§447.102. Application.	§321.3. Application.
§447.103. Definitions.	§321.5. Definitions.
§447.104. Program Description.	§321.7. Program Description.
Subchapter B. Intervention	Subchapter B. Intervention
§447.201. Purpose.	§321.51. Purpose.
§447.202. Application.	§321.53. Application.
§447.203. Definitions.	§321.55. Definitions.
Subchapter C. Treatment	Subchapter C. Treatment
§447.301. Purpose.	§321.101. Purpose.
§447.302. Application.	§321.103. Application.
§447.303. Definitions.	§321.105. Definitions.





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

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 61, Terms and Phrases, in accordance with Chapter 815, Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, March 23, 2020, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202000433

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: February 5, 2020



The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 63, Board of Trustees, in accordance with Chapter 815, Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, March 23, 2020, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202000434

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: February 5, 2020



The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 65, Executive Director, in accordance with Chapter 815, Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, March 23, 2020, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202000435

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: February 5, 2020

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 85, Flexible Benefits, in accordance with Chapter 1551 of the Texas Insurance Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, March 23, 2020, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202000432
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: February 5, 2020

◆ ◆ ◆
Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter C (relating to Chartering, Operations, Mergers, Liquidations), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.301, 91.302, 91.310 and 91.315.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter C, was published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7190). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter C, §§91.301, 91.302, 91.310 and 91.315, in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202000481
John J. Kolhoff
Commissioner
Credit Union Department
Filed: February 10, 2020

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter O (relating to Trust Powers), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.6001 - 91.6015.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter O, was published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7190). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter O, §§91.6001 - 91.6015, in their entirety in accordance with the requirements of Texas Government Code, §2001.039. However, the Commission has determined that certain sections should be amended and will propose changes in a separate section of the *Texas Register*. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapter O.

The Department hereby certifies that the adoption has been reviewed by legal counsel and found to be valid exercise of the agency's legal authority.

TRD-202000480
John J. Kolhoff
Commissioner
Credit Union Department
Filed: February 10, 2020

◆ ◆ ◆
State Securities Board

Title 7, Part 7

Pursuant to the notice of Proposed Rule Reviews published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7553), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapter of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 133, Forms. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts this chapter, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapter 133.

This concludes the review of 7 TAC, Chapter 133.

Issued in Austin, Texas on February 7, 2020.

TRD-202000474
Travis J. Iles
Securities Commissioner
State Securities Board
Filed: February 7, 2020

◆ ◆ ◆
Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts the review of Chapter 3, concerning Rules Applying to All Public and Private or Independent Institutions of Higher Education in Texas Regarding Electronic Reporting Option for Certain Offenses; Amnesty. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 3 as required by the Texas Government Code, §2001.039.

TRD-202000448
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 4, concerning Rules Applying to All Public Institutions of Higher Education in Texas. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 4 as required by the Texas Government Code, §2001.039.

TRD-202000449
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 5, concerning Rules Applying to Public Universities, Health-Related Institutions, and/or Selected Public Colleges of Higher Education in Texas. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 5 as required by the Texas Government Code, §2001.039.

TRD-202000450
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 6, concerning Health Education, Training, and Research Funds. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review,

the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 6 as required by the Texas Government Code, §2001.039.

TRD-202000451
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 7, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 7 as required by the Texas Government Code, §2001.039.

TRD-202000452
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 8, concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community College Districts. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 8 as required by the Texas Government Code, §2001.039.

TRD-202000453
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 9, concerning Program Development in Public Two-Year Colleges. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 9 as required by the Texas Government Code, §2001.039.

TRD-202000454

William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 11 concerning Texas State Technical College System. The proposed notice of review was published in the September 27, 2019 issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 11 as required by the Texas Government Code, §2001.039.

TRD-202000455
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 14, concerning Research Funding Programs. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 14 as required by the Texas Government Code, §2001.039.

TRD-202000456
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 15, concerning National Research Universities. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist.

The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 15 as required by the Texas Government Code, §2001.039.

TRD-202000457
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 26, concerning Programs of Study. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 26 as required by the Texas Government Code, §2001.039.

TRD-202000458
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



The Texas Higher Education Coordinating Board adopts the review of Chapter 27, concerning Fields of Study. The proposed notice of review was published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5639). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 27 as required by the Texas Government Code, §2001.039.

TRD-202000459
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2020



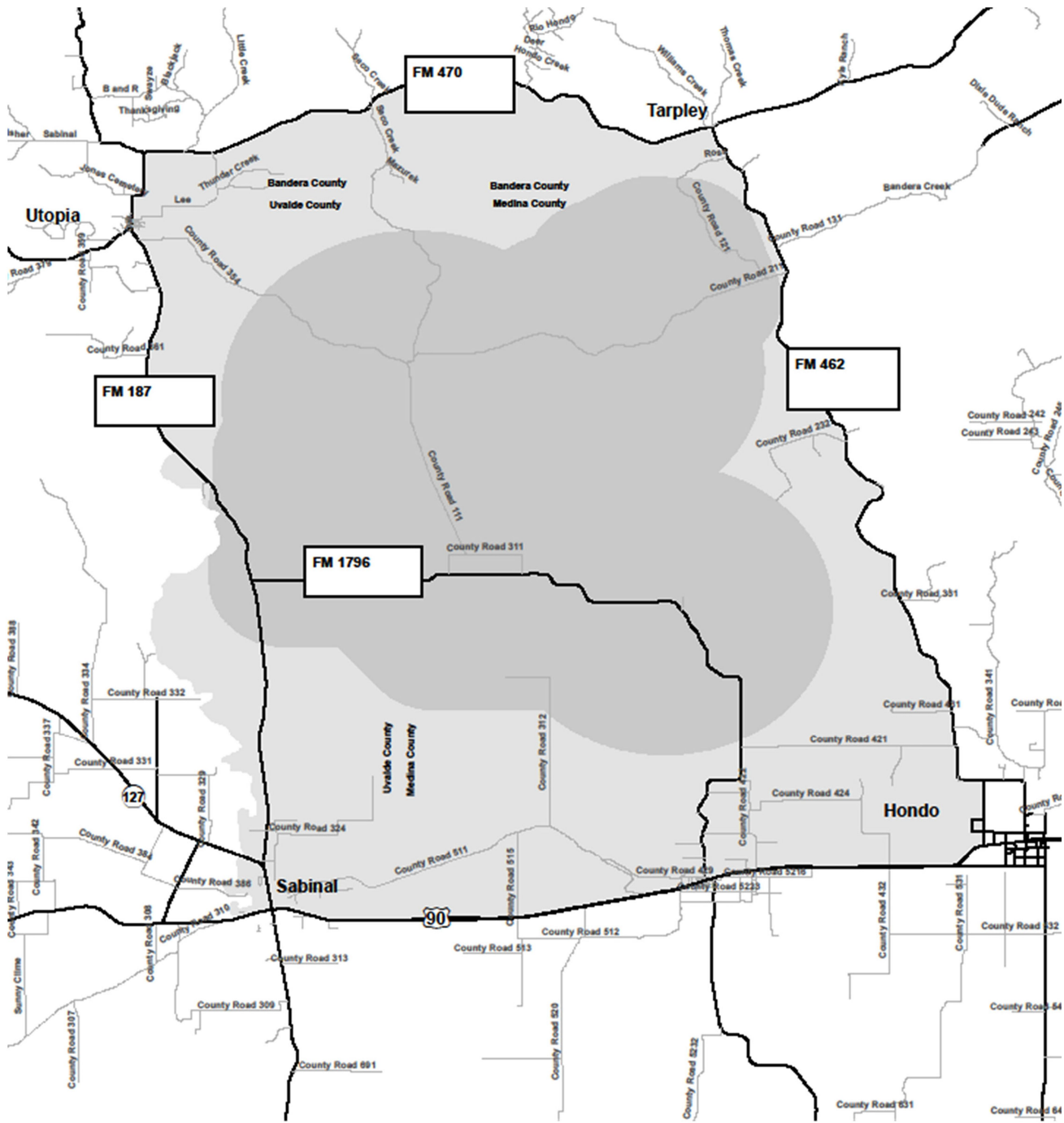
TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 31 TAC §65.81(1)(C)



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.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) for audit, tax and accounting consulting services. Entities interested in providing these services must submit all of the materials listed in the RFP which can be found on TSAHC's website at www.tsahc.org.

The deadline for submissions in response to this RFP is **March 31, 2020**. No proposal will be accepted after **3:00 p.m.** on that date. Responses should be emailed to Melinda Smith at msmith@tsahc.org. Faxed responses will not be accepted. For questions or comments, please contact Melinda Smith at (512) 904-1399 or by email at msmith@tsahc.org.

TRD-202000591

David Long
President

Texas State Affordable Housing Corporation
Filed: February 12, 2020



Public Comment Needed: 2020 Texas Foundations Fund

The 2020 Texas Foundations Fund Draft Guidelines are now available for public comment. A copy of the 2020 Texas Foundations Fund Draft Guidelines may be found on the Corporation's website at www.tsahc.org. Please submit public comment via email to Michael Wilt at mwilt@tsahc.org with the subject line "2020 Texas Foundations Fund Public Comment". Public comments must be submitted for consideration by March 16, 2020, at 5:00 p.m.

TRD-202000592

David Long
President

Texas State Affordable Housing Corporation
Filed: February 12, 2020



Alamo Area Metropolitan Planning Organization

Transportation Conformity Public Comment Outreach

The Alamo Area Metropolitan Planning Organization (AAMPO) is accepting public comments on its Transportation Conformity document for Bexar County, Texas. The public comment period will begin on Friday, February 14, 2020, and continue to 11:59 p.m. on Sunday, March 15, 2020.

A copy of the Transportation Conformity document may be obtained by downloading it from the MPO's website at www.alamoareampo.org/airquality/conformity or by calling Allison Blazosky, Transportation Planning Program Manager, at (210) 227-8651.

The AAMPO will also host a public meeting seeking comments on its Transportation Conformity document. The public meeting will be held on Thursday, February 27, 2020, from 6:00 p.m. - 7:00 p.m. at

the VIA Metro Center located at 1021 San Pedro, San Antonio, Texas 78212. AAMPO meetings are accessible to persons with disabilities. To arrange for special assistance or an interpreter, please call (210) 227-8651 or TDD (800) 735-2989 (Relay Texas) at least five working days in advance.

An online public comment option will also be available from February 14 through March 15, 2020, at www.alamoareampo.org/airquality/conformity.

Comments may also be submitted in writing to:

Allison Blazosky

Transportation Planning Program Manager

Alamo Area MPO

825 S. St. Mary's Street

San Antonio, Texas 78205

TRD-202000575

Jeanne Geiger
Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: February 11, 2020



Office of the Attorney General

Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS) - State Expansion Grant and SAPCS-Preventive Health and Health Services (PHHS) Block Grant Programs

The Office of the Attorney General (OAG) is soliciting applications from sexual assault programs and state sexual assault coalitions that wish to utilize funds for projects to expand the existing services of sexual assault programs into unserved counties or that provide services to victims of sexual assault and conduct sexual violence prevention activities.

Applicable Funding Source: Both State and Federal funds may be utilized. The source of federal funds includes the Federal Department of Health and Human Services, Preventive Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements: To be eligible for these grant opportunities, the Applicant must be a sexual assault program who is a FY 2020 SAPCS-State grantee or the state sexual assault coalition. For sexual assault programs, a current SAPCS-State grantee is one that has an active SAPCS-State grant contract for FY 2020 (September 1, 2019 through August 31, 2020).

Eligible Applicants: Sexual assault programs are eligible to apply for the SAPCS-State Expansion grant. Sexual assault programs and the

state sexual assault coalition are eligible to apply for a SAPCS-PHHS Block grant. Funding eligibility may be further limited as stated in the Application Kit.

Sexual Assault Programs - any local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency and that provides the following minimum services to adult survivors of stranger and non-stranger sexual assault: 24-hour crisis hotline, crisis intervention, public education, advocacy, and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts and meets the Minimum Services Standards. Applicant must be a current SAPCS-State grantee to apply.

State Sexual Assault Coalitions - a statewide nonprofit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account (for Applicants who did not create an account during the OVAG, VCLG, and SAPCS-State grant application cycle): Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

First Name

Last Name

Email Address

Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

--Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green "View Grant Programs" button. If the answers provided on the Eligibility questions matched to the SAPCS-State Expansion or PHHS Block Grant, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available:

SAPCS-State Expansion grant: the minimum and maximum amount of funding a sexual assault program may apply for is \$13,156 per fiscal year per county of expansion.

SAPCS-PHHS Block grant: the minimum amount of funding a sexual assault program may apply for is \$31,815 and the maximum amount of funding a sexual assault program may apply for is \$47,723 per fiscal year. The minimum amount of funding a state sexual assault coalition may apply for is \$50,000 and maximum amount of funding a state sexual assault coalition may apply for is \$85,000 per fiscal year.

The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant period for SAPCS-State Expansion Grant is for up to two years from June 1, 2020 through August 31, 2021, subject to and contingent on funding and/or approval by the OAG. The grant period for SAPCS-PHHS Block is for up to two years from June 1, 2020 through September 30, 2021, subject to and contingent on funding and/or approval by the OAG. Contracts will be awarded for up to a one-year period (term). Contract terms may be further limited as stated in the Application Kit.

No Match Requirements: There are no match requirements for SAPCS-State Expansion and SAPCS-PHHS Block projects.

Volunteer Requirements: All SAPCS-State Expansion and SAPCS-PHHS Block projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Karly Watson at grants@oag.texas.gov or (512) 936-0792.

TRD-202000557

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: February 10, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/17/20 - 02/23/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/17/20 - 02/23/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202000572

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 11, 2020



Texas Education Agency

Request for Applications Concerning the 2020-2022 Pathways in Technology Early College High Schools (P-TECH) Success Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-114 is authorized by General Appropriations Act, Article III, Rider 66, 86th Texas Legislature, and Texas Education Code (TEC), §§29.551-29.556 and 29.908.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-114 from eligible applicants, which include local educational agencies (LEAs) that serve students in Grades 9-12 or that serve students in Grade 9, Grades 9 and 10, or Grades 9-11 and will progressively scale up by adding at least one grade level per year. LEAs must have also: (1) been implementing a program similar to P-TECH that allows students to earn industry credentials and associate degrees, engage in appropriate work-based education at every grade level, and participate in programs that create a seamless transition to additional education or the competitive job market; (2) established partnerships with at least one institution of higher education (IHE) defined in a written agreement; and (3) established partnership(s) with employer(s) defined in a written agreement. Recipients of the 2018-2020 Pathways in Technology Early College High Schools (P-TECH) and Industry Cluster Innovative Academies (ICIA) Success (RFA#701-18-101) grant or the 2019-2021 Pathways in Technology Early College High Schools (P-TECH) and Industry Cluster Innovative Academies (ICIA) Success (RFA#701-19-108) grant are not eligible to apply.

Description. The 2020-2022 P-TECH Success Grant will provide selected applicants funds to engage in 25 months (June 1, 2020-July 8, 2022) of ongoing alignment of current practices to the P-TECH Blueprint, with support from the TEA-selected technical assistance provider, to continue the collaborative leadership and system establishment of the P-TECH model, as outlined in TEC, §§29.551-29.556 (P-TECH). The P-TECH model allows students the opportunity to earn a high school diploma while simultaneously earning industry certifications, level 1 or level 2 certificates, and/or an associate degree on or before the sixth anniversary of a student's first day of high school at no cost to the student. P-TECH campuses establish strong partnership agreements with local business and industry as well as IHEs. The partners serve on the leadership and advisory team to provide support and guidance to the P-TECH in resource acquisition, curriculum development, work-based learning, and student/community outreach to ensure

a successful academic and career pipeline. In partnership with an IHE as well as community employers, a P-TECH campus provides rigorous academic and work-based learning programs that provide students with clear pathways to regional employment opportunities in response to local workforce needs. P-TECH schools are public schools established under TEC, §29.553 (P-TECH), that enable students in Grade 9, 10, 11, or 12 who are at risk of dropping out, as defined by TEC, §29.081, or who wish to accelerate completion of high school to combine high school courses and college-level courses. Grantees are required to meet design elements and outcome-based measures detailed in the P-TECH Blueprint. Grantees are also required to apply for P-TECH designation in the 2021-2022 school year when the designation application window opens to continue serving students in the 2021-2022 school year, as required by this grant.

Dates of Project. The 2020-2022 P-TECH Success Grant will be implemented during the 2019-2020 school year through the 2021-2022 school year. Applicants should plan for a starting date of no earlier than June 1, 2020, and an ending date of no later than July 8, 2022.

Project Amount. Approximately \$875,000 is available for funding the 2020-2022 P-TECH Success Grant. It is anticipated that approximately 7 grants will be awarded up to \$125,000. This project is funded 100% with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to PTECH@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Tuesday, March 24, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, March 31, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, April 9, 2020, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin,

Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Issued in Austin, Texas, on February 12, 2020.

TRD-202000585

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 12, 2020

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 **March 23, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 23, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 122nd & FRANKFORD / DISCOUNT SHOP RENTALS, INCORPORATED; DOCKET NUMBER: 2019-1502-PWS-E; IDENTIFIER: RN106514029; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride based on a running annual average; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director for the January 1, 2016 - December 31, 2018, monitoring period; PENALTY: \$900; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Antonio Trejo; DOCKET NUMBER: 2019-1489-WR-E; IDENTIFIER: RN110819174; LOCATION: Borden, Colorado County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert, or use state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 9900 West Interstate Highway 20, Suite 100, Midland, Texas 79706 (432) 570-1359.

(3) COMPANY: Bells Drilling Service LLC; DOCKET NUMBER: 2020-0136-WR-E; IDENTIFIER: RN110894672; LOCATION: Livingston, Polk County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: BROOKSON BUILDERS, LLC; DOCKET NUMBER: 2020-0129-WQ-E; IDENTIFIER: RN110925294; LOCATION: Reno, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: ROBERT CAMP; DOCKET NUMBER: 2020-0133-WOC-E; IDENTIFIER: RN110893351; LOCATION: Melvin, McCulloch County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: City of Ferris; DOCKET NUMBER: 2019-1347-PWS-E; IDENTIFIER: RN101430338; LOCATION: Ferris, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; 30 TAC §290.45(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of at least 0.6 gallons per minute per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels for fluoride of 2.0 milligrams per liter (mg/L) and total dissolved solids of 1,000 mg/L or receive written approval from the executive director to use the water source for public drinking water; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$416; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2019-1360-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(F) and §122.143(4), Federal Operating Permit (FOP) Number O1426, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2128, Special Conditions Number 1, FOP Number O1426, GTC and STC Number 37, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$9,626; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,850; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: G4J Materials LLC; DOCKET NUMBER: 2019-1273-WQ-E; IDENTIFIER: RN107135113; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §§281.25(a)(4), 311.74(b)(1)(A), and 311.75, TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge water associated with quarry activities to water in the state located in a water quality protection area in the John Graves Scenic Riverway; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: GERALD A. AND LINDA D. GORDON; DOCKET NUMBER: 2020-0038-WR-E; IDENTIFIER: RN110872397; LOCATION: Fort Stockton, Pecos County; TYPE OF FACILITY: public water system/supply; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Parman Enterprises LLC fka Stewart & Stevenson LLC; DOCKET NUMBER: 2019-1286-AIR-E; IDENTIFIER: RN102874419; LOCATION: Houston, Harris County; TYPE OF FACILITY: oil and gas field machinery and equipment manufacturing; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3774, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2019-1688-AIR-E; IDENTIFIER: RN110098357; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: asphalt production plant; RULES VIOLATED: 30 TAC §101.24(b) and Texas Health and Safety Code, §382.085(b), by failing to submit the emissions/inspection fee basis form within 60 days after being provided the emissions/inspection fee information packet; PENALTY: \$1,725; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(12) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2019-1699-AIR-E; IDENTIFIER: RN106224520; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §101.24(b) and Texas Health and Safety

Code, §382.085(b), by failing to submit the emissions/inspection fee basis form within 60 days after being provided the emissions/inspection fee information packet; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2019-1689-AIR-E; IDENTIFIER: RN106197577; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §101.24(b) and Texas Health and Safety Code, §382.085(b), by failing to submit the emissions/inspection fee basis form within 60 days after being provided the emissions/inspection fee information packet; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(14) COMPANY: PLAINS BAPTIST ASSEMBLY; DOCKET NUMBER: 2019-1142-PWS-E; IDENTIFIER: RN101232262; LOCATION: Floydada, Floyd County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.43(c)(3), by failing to ensure all overflows are not subject to submergence; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III) and §290.47(f), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter for Well Number 3 at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit the test results proving that the well is in a non-deteriorated condition; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; PENALTY: \$1,410; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Realty Income Properties 22, LLC; DOCKET NUMBER: 2019-1108-PWS-E; IDENTIFIER: RN106064561; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) of ten milligrams per liter for nitrate; and 30 TAC §290.122(a)(2) and (f), by failing to issue public notification and submit a copy of the notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the acute MCL for nitrate during the second quarter of 2019; PENALTY: \$385; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(16) COMPANY: Robinson Russell S. Jr.; DOCKET NUMBER: 2020-0089-OSS-E; IDENTIFIER: RN103653424; LOCATION: Orange, Orange County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an

on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: VICTOR SILVA; DOCKET NUMBER: 2020-0135-WOC-E; IDENTIFIER: RN103598124; LOCATION: Melvin, McCulloch County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: Topcon Inc; DOCKET NUMBER: 2020-0128-WQ-E; IDENTIFIER: RN110910650; LOCATION: Luling, Guadalupe County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Triumph Aerostructures, LLC; DOCKET NUMBER: 2019-1220-AIR-E; IDENTIFIER: RN100215185; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: aircraft manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(i) and (c) and §122.143(4), New Source Review (NSR) Permit Number 18471, Special Conditions (SC) Numbers 11.B(1) and 11.C, Federal Operating Permit (FOP) Number O1629, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 7, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 18471, SC Number 2, FOP Number O1629, GTC and STC Number 7, and THSC, §382.085(b), by failing to physically identify and mark in a conspicuous location all equipment covered by the permit with the facility identification numbers and emissions point numbers; 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1629, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failed to submit the deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1629, GTC and STC Number 10, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$6,725; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: WWF Operating Company, LLC; DOCKET NUMBER: 2019-1403-WQ-E; IDENTIFIER: RN100607902; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: food processing facility; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202000561

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 11, 2020



Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (NAPD) for Water Quality Land

Application Permit for Municipal Wastewater: New Proposed Permit No. WQ0015835001

APPLICATION AND PRELIMINARY DECISION. Silesia Properties, LP, 24114 Blanco Road, San Antonio, Texas 78260, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed TCEQ Permit No. WQ0015835001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 365,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 84 acres. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on November 8, 2019.

The wastewater treatment facility and disposal site will be located at 26226 West State Highway 46, in the City of Spring Branch, Comal County, Texas 78070. The wastewater treatment facility and disposal site will be located in the drainage basin of Guadalupe River Above Canyon Lake in Segment No. 1806 of the Guadalupe River Basin. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.5075%2C29.815277&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, 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 Mammen Family Public Library, 131 Bulverde Crossing, Bulverde, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, March 19, 2020 at 7:00 p.m.

Rahe Bulverde Elementary School

1715 East Ammann Road

Bulverde, Texas 78163

AGENCY CONTACTS AND INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/epic/eComment/. **Public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.** Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hear-

ing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address above.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

Further information may also be obtained from Silesia Properties, LP at the address stated above or by calling Mr. Aaron Laughlin, P.E., Steger Bizzell at (512) 930-9412.

Issuance Date: February 12, 2020

TRD-202000588

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020



Enforcement Orders

An agreed order was adopted regarding Amigos Beef Cattle Company, LLC, Docket No. 2018-0264-MLM-E on February 11, 2020, assessing \$4,012 in administrative penalties with \$802 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Susser Petroleum Property Company LLC dba Fast Break 8, Docket No. 2018-0776-PST-E on February 11, 2020, assessing \$5,750 in administrative penalties with \$1,150 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reyes Cantu and Ernesto M. Cantu dba Mi Taco Village, Docket No. 2018-1220-PWS-E on February 11, 2020, assessing \$522 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alfonso's Tire and Wheels, LLC and Alfonso R. Martinez dba Alfonso's Tire Shop, Docket No. 2018-1602-MLM-E on February 11, 2020, assessing \$5,500 in administrative penalties with \$1,100 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Skipper Beverage Company, LLC dba Stop N Go 2187, Docket No. 2018-1612-PST-E on Febru-

ary 11, 2020, assessing \$3,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding East Texas Convenience, LLC dba The Villager Grocery, Docket No. 2019-0058-PST-E on February 11, 2020, assessing \$4,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Port Arthur, Docket No. 2019-0125-PST-E on February 11, 2020, assessing \$7,150 in administrative penalties with \$1,430 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2019-0166-AIR-E on February 11, 2020, assessing \$5,213 in administrative penalties with \$1,042 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MEBB ENTERPRISES, LLC, Docket No. 2019-0285-PWS-E on February 11, 2020, assessing \$1,080 in administrative penalties with \$216 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lazy Oaks Ranch, LP, Docket No. 2019-0343-EAQ-E on February 11, 2020, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2019-0358-AIR-E on February 11, 2020, assessing \$6,563 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Landers Precast Concrete, LLC, Docket No. 2019-0559-WQ-E on February 11, 2020, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solid Rock Crushing, LLC, Docket No. 2019-0699-AIR-E on February 11, 2020, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Celanese Ltd., Docket No. 2019-0706-AIR-E on February 11, 2020, assessing \$6,037 in administrative penalties with \$1,207 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Milford, Docket No. 2019-0718-PWS-E on February 11, 2020, assessing \$100 in administrative penalties with \$20 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LGL Investments LLC, Docket No. 2019-0719-PWS-E on February 11, 2020, assessing \$1,500 in administrative penalties with \$300 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding James Lake Midstream LLC, Docket No. 2019-0729-AIR-E on February 11, 2020, assessing \$3,713 in administrative penalties with \$742 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Orion Engineered Carbons LLC, Docket No. 2019-0765-AIR-E on February 11, 2020, assessing \$3,263 in administrative penalties with \$652 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 4-S Manufacturing Texas Limited Liability Company, Docket No. 2019-0791-AIR-E on February 11, 2020, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cresson Crossroads, LLC, Docket No. 2019-0797-PWS-E on February 11, 2020, assessing \$405 in administrative penalties with \$81 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johnny Piano, Docket No. 2019-0801-AIR-E on February 11, 2020, assessing \$2,688 in administrative penalties with \$537 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Byers, Docket No. 2019-0841-MWD-E on February 11, 2020, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kuraray America, Inc., Docket No. 2019-0859-AIR-E on February 11, 2020, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Anheuser-Busch, LLC, Docket No. 2019-0860-AIR-E on February 11, 2020, assessing \$4,313 in administrative penalties with \$862 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTG Jameson, LP, Docket No. 2019-0871-AIR-E on February 11, 2020, assessing \$5,145 in administrative penalties with \$1,029 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2019-0926-MWD-E on February 11, 2020, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exxon Mobil Corporation, Docket No. 2019-0958-AIR-E on February 11, 2020, assessing \$6,787 in administrative penalties with \$1,357 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RATTLER ROCK, INC., Docket No. 2019-0984-WQ-E on February 11, 2020, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONEOK Hydrocarbon Southwest, LLC, Docket No. 2019-1030-AIR-E on February 11, 2020, assessing \$5,212 in administrative penalties with \$1,042 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rowena Water Supply Corporation, Docket No. 2019-1043-MLM-E on February 11, 2020, assessing \$1,417 in administrative penalties with \$283 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WINDSOR WATER COMPANY, Docket No. 2019-1087-MLM-E on February 11, 2020, assessing \$1,267 in administrative penalties with \$253 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Spanky's Quick Stop, Inc. dba Quick Stop, Docket No. 2019-1109-PST-E on February 11, 2020, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Gladewater, Docket No. 2019-1177-PWS-E on February 11, 2020, assessing \$636 in administrative penalties with \$127 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORRIS-BRANTLEY, INC. dba Skinners Lakeport, Docket No. 2019-1268-PST-E on February 11, 2020, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2019-1293-PWS-E on February 11, 2020, assessing \$143 in administrative penalties with \$28 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Joel Pescador, Docket No. 2019-1529-WOC-E on February 11, 2020, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Coby L Dobbins, Docket No. 2019-1596-WOC-E on February 11, 2020, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding M & H Manufacturing, Inc., Docket No. 2019-1621-WQ-E on February 11, 2020, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GENE ESTES, Docket No. 2019-1650-WR-E on February 11, 2020, assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000581

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020,



Enforcement Orders

A default order was adopted regarding GSA C-STORES, INC. dba Savings Food Store, Docket No. 2017-0782-PST-E on February 12, 2020, assessing \$6,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Doug Calhoun dba Bubba's Scrap and Junk Removal, Docket No. 2017-0926-MLM-E on February 12, 2020, assessing \$2,442 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Castroville, Docket No. 2017-1458-MWD-E on February 12, 2020, assessing \$77,700 in administrative penalties with \$15,540 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding SIAL INVESTMENTS INC. dba Texas Stop 1, Docket No. 2018-0230-PST-E on February 12, 2020, assessing \$4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP and LyondellBasell Acetyls, LLC, Docket No. 2018-0544-IWD-E on February 12, 2020, assessing \$109,903 in administrative penalties with \$21,980 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALIKE INC. dba Beta C Store, Docket No. 2018-0575-PST-E on February 12, 2020, assessing \$15,101 in administrative penalties with \$3,020 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EnerVest Operating, LLC, Docket No. 2018-0669-AIR-E on February 12, 2020, assessing \$147,375 in administrative penalties with \$29,475 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding R & K LLC dba Discount Self Serve 2, Docket No. 2018-0796-PST-E on February 12, 2020, assessing \$9,124 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shady Shores Communities, LLC, Docket No. 2018-0916-PST-E on February 12, 2020, assessing \$10,159 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of La Feria, Docket No. 2018-1234-PST-E on February 12, 2020, assessing \$13,439 in administrative penalties with \$2,687 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding One Eighty Collision Center, LLC, Docket No. 2018-1416-AIR-E on February 12, 2020, assessing

\$1,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEDA TPCO America Corporation fka TPCO America Corporation, Docket No. 2018-1516-AIR-E on February 12, 2020, assessing \$37,368 in administrative penalties with \$7,473 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bassam S. Zahra dba Saveway FS, Docket No. 2018-1526-PST-E on February 12, 2020, assessing \$24,867 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding BHAYANI INVESTMENT, INC. dba Micky's Pitstop 2, Docket No. 2018-1599-PST-E on February 12, 2020, assessing \$9,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercuri 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 Blaine Larsen Farms, Inc., Docket No. 2018-1616-AIR-E on February 12, 2020, assessing \$17,250 in administrative penalties with \$3,450 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Margaret Ann Manchac, Docket No. 2018-1639-PST-E on February 12, 2020, assessing \$3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Frankie Bell dba Trenton Tire Shop, Docket No. 2018-1739-MSW-E on February 12, 2020, assessing \$10,288 in administrative penalties with \$2,057 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kuraray America, Inc., Docket No. 2019-0190-AIR-E on February 12, 2020, assessing \$10,200 in administrative penalties with \$2,040 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKESHORE UTILITY COMPANY, Docket No. 2019-0228-PWS-E on February 12, 2020, assessing \$1,430 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Raymond W. Blair, Jr. dba Last Resort Properties, Docket No. 2019-0229-PWS-E on February 12, 2020, assessing \$1,104 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime

Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Donita Banks, Docket No. 2019-0300-MSW-E on February 12, 2020, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IJKM Inc. dba Hi Mart Beverage Store, Docket No. 2019-0336-PST-E on February 12, 2020, assessing \$27,050 in administrative penalties with \$5,410 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GURUDEO CORPORATION dba K A Minimart, Docket No. 2019-0444-PST-E on February 12, 2020, assessing \$12,401 in administrative penalties with \$2,480 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Conroe Holdings, LLC, Docket No. 2019-0455-WQ-E on February 12, 2020, assessing \$9,375 in administrative penalties with \$1,875 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Benjamin, Docket No. 2019-0513-PWS-E on February 12, 2020, assessing \$1,233 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Positano Properties, LLC, Docket No. 2019-0537-PST-E on February 12, 2020, assessing \$10,989 in administrative penalties with \$2,197 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WHITE HORSE CHRISTIAN ACADEMY, INC., A Texas Nonprofit Corporation, Docket No. 2019-0605-PWS-E on February 12, 2020, assessing \$396 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOLINA'S COUNTRY STORE, INC., Docket No. 2019-0668-PST-E on February 12, 2020, assessing \$14,436 in administrative penalties with \$2,887 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2019-0731-PWS-E on February 12, 2020, assessing \$2,972 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Concrete on Demand, LLC, Docket No. 2019-0932-AIR-E on February 12, 2020, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000589

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 159661

APPLICATION. Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 159661 to authorize the continued operation of a permanent concrete batch plant with enhanced controls and construct a second permanent concrete batch plant with enhanced controls. The facility is proposed to be located in the extraterritorial jurisdiction of San Antonio at 12658 East Interstate Highway 10, near Converse, Bexar County, Texas 78109. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.481495&lng=-98.233448&zoom=13&type=r>. This application was submitted to the TCEQ on January 6, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on January 16, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, March 12, 2020, at 6:00 p.m.

Best Western Plus San Antonio East Inn and Suites

8669 East Interstate Highway 10

San Antonio, Texas 78109

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ San Antonio Regional Office, located at 14250 Judson Rd., San Antonio, Texas 78233-4480, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830, or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC, at (972) 768-9093.

Notice Issuance Date: February 4, 2020

TRD-202000578

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020



Notice of Hearing Lealco, Inc.: SOAH Docket No. 582-20-2399; TCEQ Docket No. 2018-1759-MSW; Proposed Permit No. 2398

APPLICATION.

Lealco, Inc., 7118 U.S. Highway 59 South, Goodrich, Polk County, Texas, 77335, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V Municipal Solid Waste Transfer Station permit. The facility is proposed to be located on approximately 20.5 acres of property located off County Road (CR) 130, approximately 0.8 miles northwest of the intersection of CR 130 and Chandler Road, in an unincorporated area of Williamson County, Texas, and within the extraterritorial jurisdiction of the City of Hutto, Texas. The transfer station facility would accept and transfer municipal solid waste which includes wastes resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; construction or demolition waste; special waste that does not interfere with site operations; and other wastes such as Class 2 and Class 3 industrial waste. The TCEQ received this application on August 11, 2017. 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: <[\[gis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.56%2C30.5976&level=12\]\(https://tceq.maps.ar-gis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.56%2C30.5976&level=12\)>. For the exact location, refer to the application.](https://tceq.maps.ar-</p></div><div data-bbox=)

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 Hutto City Secretary's office located at 500 West Live Oak Street, Hutto, Texas. The permit application may be viewed online at <http://www.scsengineers.com/State/williamson-transfer-station>.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on December 20, 2018; January 3, 2019; January 10, 2019; and January 17, 2019. On January 21, 2020, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - March 30, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

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 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from Lealco, Inc. at the address stated above or by calling Mr. Chris Ruane, Region Engineering Manager, at (832) 442-2204.

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.

TRD-202000580

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020



Notice of Hearing Port of Corpus Christi Authority of Nueces County: SOAH Docket No. 582-20-1895; TCEQ Docket No. 2019-1156-IWD; Permit No. WQ0005253000

APPLICATION.

Port of Corpus Christi Authority of Nueces County, P.O. Box 1541, Corpus Christi, Texas 78403, which proposes to operate the Harbor Island Property - Former FINA Tank Farm, a seawater desalination facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005253000, to authorize the discharge of water treatment wastes at a daily average flow not to exceed 95,600,000 gallons per day via Outfall 001. The TCEQ received this application on March 7, 2018.

The facility will be located adjacent to State Highway 361 just northeast of the Ferry Landing, in Nueces County, Texas 78336. 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: <<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.0675%2C27.845833&level=12>>. For the exact location, refer to the application.

The effluent will be discharged via pipe directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The designated uses for Segment No. 2481 are primary contact recreation, exceptional aquatic life use, and oyster waters.

In accordance with Title 30 Texas Administrative Code (TAC) Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), 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 Corpus Christi Bay, which has been identified as having exceptional 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.

The TCEQ Executive Director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

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 following locations: Ed & Hazel Richmond Public Library, located at 110 N La-

mont Street, Aransas Pass, Texas 78336; City Hall of Port Aransas, located at 710 W Avenue A, Port Aransas, Texas 78373; La Retama Central Library, located at 805 Comanche Street, Corpus Christi, Texas 78401; and Sinton Public Library, located at 100 N Pirate Blvd, Sinton, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

11:00 a.m. - March 24, 2020

Civic Center

710 West Avenue A

Port Aransas, Texas 78373

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be 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 November 21, 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, 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.

Further information may also be obtained from Port of Corpus Christi Authority of Nueces County at the address stated above or by calling Ms. Sarah L. Garza, Director of Environmental Planning, at (361) 885-6163.

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: February 6, 2020

TRD-202000579

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2020



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ARNOLD TRUCKING, INC.; DOCKET NUMBER: 2019-0129-WQ-E; TCEQ ID NUMBER: RN109813758; LOCATION: approximately 6 miles south of Hallsville on the north side of Farm-to-Market Road 2625 West, Hallsville, Harrison County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: TWC, §26.121(a)(1) and TCEQ AO Docket Number 2017-1015-WQ-E, Ordering Provision Numbers 2.a.iv and v., by failing to prevent the unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: \$3,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: C.M.T. Enterprises, LLC dba In N Out C Store Gas Station; DOCKET NUMBER: 2018-1255-PST-E; TCEQ ID NUMBER: RN103940854; LOCATION: 12040 Socorro Road, San Elizario, El Paso County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs. Specifically, 49 deliveries were accepted during a 13-month period without a delivery certificate; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to review a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on July 31, 2016; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2),

by failing to provide release detection for the pressurized piping associated with the UST system. Specifically, the Respondent had not conducted the annual line leak detector and piping tightness tests; PENALTY: \$19,720; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: RZ Traders Inc dba Pride Food Store; DOCKET NUMBER: 2018-1311-PST-E; TCEQ ID NUMBER: RN100760578; LOCATION: 801 South Greenville Avenue, Allen, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202000562

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 11, 2020



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers;

however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: CATALPA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-0546-PWS-E; TCEQ ID NUMBER: RN101247211; LOCATION: one mile south of Interstate Highway 27 off Western Street on Catalpa Street, near Amarillo, Randall County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ DO Docket Number 2014-1612-PWS-E, Ordering Provision Number 3.d.ii., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director; and 30 TAC §290.108(e), by failing to provide the results of radionuclides monitoring; PENALTY: \$812; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Keith Woodard; DOCKET NUMBER: 2017-1772-WQ-E; TCEQ ID NUMBER: RN109447581; LOCATION: 1/8 mile from the intersection of County Road 1007 and Highway 255, Jasper, Jasper County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations, §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the discharge of other waste into or adjacent to any other water in the state; PENALTY: \$3,750; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: WORTH OIL COMPANY; DOCKET NUMBER: 2018-1342-PST-E; TCEQ ID NUMBER: RN110484060; LOCATION: 1807 Holly Oak Street, Arlington, Tarrant County; 3401 Decatur Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: common carrier; RULES VIOLATED: TWC, §26.3467(d) and 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$6,355; STAFF ATTORNEY: Benjamin Warms, Litigation Division, MC 175, (512) 239-5144; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202000563

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 11, 2020



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown

Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2020**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2020**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Rupinderjit Singh dba Family Mart; DOCKET NUMBER: 2019-0486-PST-E; TCEQ ID NUMBER: RN101744613; LOCATION: 1601 Main Street, Sulphur Springs, Hopkins County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1)(A) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C for the facility; PENALTY: \$4,500; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: SAI SUMU INC dba Andy's Food Store; DOCKET NUMBER: 2019-0380-PST-E; TCEQ ID NUMBER: RN101632081; LOCATION: 4470 Southwest Boulevard, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d), 30 TAC §334.49(a)(1), and TCEQ Agreed Order Docket Number 2016-1510-PST-E, Ordering Provision Number 2.a., by failing to provide corrosion protection for the UST system; PENALTY: \$40,500; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202000560

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General Land Office

**Notice and Opportunity to Comment on Requests for
Consistency Agreement/Concurrence Under the Texas Coastal
Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 27, 2020, to February 7, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, February 14, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday March 15, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Deepwater Partners Terminals I, LLC

Location: The project site is located in Buffalo Bayou, approximately 11.5 miles southeast of Houston, within Harris County, Texas.

Latitude & Longitude (NAD 83): 29.741850, -95.154936

Project Description: The applicant proposes to modify their standard permit to dredge an additional 0.88 acres of palustrine emergent wetlands in order to accommodate an additional berthing slip, larger ship sizes, a barge dock, add a pier and trestle to extend one of the docks (thereby allowing ships to dock on either side), construct a 160-foot by 50-foot barge dock, install 4,600 linear feet of bulkhead, increase the dredge footprint by 9.4 acres (an additional 1.2 million cubic yards), utilize previously authorized dredge material placement areas (DM-PAs), and acquire authorization to maintenance dredge for 10 years.

The following DMPAs are authorized: Filter bed, Glendale, Stimson-House Tract, Clinton, Rosa Allen, Wah Chang, Targa-Dynegy, East/West Jones, Green's Bayou, Spilman Island, Beltway 8 Tract, TDWP (formerly Pinto Lion), Houston Spoils, Houston Marine Service, Lost Lake, Adloy, Goat Island, Peggy Lake, and Alexander Island.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2007-01694. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act.

CMP Project No: 20-1123-F1

Applicant: Moda Ingleside Oil Terminal, LLC

Location: project site is located on the north side of the Corpus Christi Ship Channel (CCSC) between approximate Stations 520+07 and 540+08 at 262 Coral Sea Road (formerly Naval Station Ingleside), Ingleside, San Patricio County, Texas

Latitude & Longitude (NAD 83): 27.815509, -97.209526

Project Description: The applicant proposes to dredge approximately 3.9 million cubic yards of material to increase the area of its West Basin by approximately 32.8 acres to a total of 43 acres, including side slopes. Dredging would be done using both mechanical and hydraulic methods with placement of all dredged material on Berry Island. Potential dredged material placement areas (DMPAs) for future dredging, including maintenance, would include all Federally authorized and constructed, upland confined, dredged material placement areas, Good Hope, Dagger Island, and Beneficial Use Sites as available. Moda additionally proposes to implement improvements at its existing East Basin 2A barge dock by constructing a pile-supported 35-foot by 70-foot barge platform, which would require moving the existing fender line approximately 38 feet waterward of its current location. Four breasting dolphins and four protection dolphins would be installed. Improvements to the new West Basin include construction of barge dock Berths 7A, 7B, 7C, 8, and 9. This would require the placement of approximately 59.26 cubic yards of material to extend the existing bulkhead approximately 491 linear feet along the shoreline, and the installation of a new pile-supported barge dock to allow berthing on each side. Berths 7A, B, and C would require the installation of 38 barge dolphins. Existing bay bottom in the vicinity of Berth 7 would be dredged to a depth of -13 feet mean low tide (-15 feet MLLW) with a 2-foot allowable over-dredge. The remainder of the West Basin expansion would be dredged to a depth of -54 feet MLLW and an additional 2-foot allowable over-dredge and 2-foot advanced maintenance. To stabilize the dredge side slope, the project would install approximately 1,350 linear feet of 44-foot-wide articulated block mattress. Berths 8 and 9 would consist of a sheetpile causeway, pile-supported approach, an 80- by 120-foot pile-supported loading platform, twelve breasting dolphins, and nine mooring dolphins. Approximately 8.86 acres of sea-grass and 0.95 acre of emergent wetlands would be impacted by this project.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1995-02221. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1139-F1

Applicant: Texas General Land Office

Location: The project site is located in Gulf of Mexico, at State Highway 87, northeast of Bauer Street, in Gilchrist, Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.50677, -94.49995

Project Description: The applicant proposes to construct a 1,000-foot-long by 20-foot-wide T-head concrete recreational pier with a timber top deck. The pier would land to the west of the existing Rollover Pass (closure in progress) and extend out into the Gulf of Mexico. Concrete would be discharged in the form of predominantly pre-cast concrete pilings for the pier. The proposed total amount of fill material associated with the 138 pier pilings would be 0.013 acre.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2013-00808. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act.

CMP Project No: 20-1134-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701,

or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202000577

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: February 11, 2020



Texas Higher Education Coordinating Board

Request for Proposals - Implementation Evaluation of House Bill (HB) 2223

RFP Number 781-0-22731

Texas Higher Education Coordinating Board (THECB) is soliciting proposals from qualified respondents to enter into a contract, in accordance with the requirements contained in this Request for Proposal (RFP).

Scope of Work:

The purpose of this RFP is to solicit Proposals from qualified public or private organizations, independent evaluators, or higher education institutions to conduct an external evaluation of the implementation by Texas public institutions of higher education of House Bill (HB) 2223, 85th Legislative Session. This legislation requires that a certain percentage of the institution's underprepared students be enrolled in corequisite model(s). A corequisite model is an instructional strategy whereby undergraduate students as defined in TSI Rule 4.53(24) are co-enrolled or concurrently enrolled in a developmental education course or non-course competency-based option (NCBO) as defined in TSI Rule 4.53(18) and the entry-level freshman course of the same subject matter within the same semester. The developmental component provides support aligned directly with the learning outcomes, instruction, and assessment of the entry-level freshman course, and makes necessary adjustments as needed in order to advance students' success in the entry-level freshman course. Such models are designed to accelerate students through milestones towards successful completions and transfers as outlined in the state's higher education strategic plan, *60x30TX*.

Awarded Respondent(s) shall have demonstrated experience and understanding of higher education as delivered in Texas and developmental education metrics and processes; and experience and knowledge in both quantitative and qualitative methodologies including face-to-face and telephone interviews and focus groups. The successful Respondent(s) should also have experience in managing complex, statewide evaluation projects with multiple stakeholders.

The Awarded Respondent(s) shall work collaboratively with THECB staff members to develop evaluation methods appropriate to program design. These methods may include site visits, as well as interview and focus groups of students, faculty, and other stakeholders, as identified by the THECB.

The Awarded Respondent shall conduct an evaluation of the implementation of HB 2223.

To include:

Quantitative analysis:

Access and use administrative and survey data collected by the THECB to analyze the following:

--1. Comparison of student success metrics in corequisite developmental education models with non-corequisite developmental education models.

--2. Comparison of student success metrics in various implementation options of corequisite developmental education (e.g. number of semester credit hours, mode of instruction, etc.).

Use of administrative data will require analysis to be conducted at one of the designated Texas Education Research Centers (ERC), and/or at the THECB headquarters.

Cost Study:

Conduct a study and report findings on the cost effectiveness of the implementation of corequisite developmental education models as required by HB 2223.

Implementation Study:

Conduct site visits to institutions throughout Texas to identify and report the mechanisms by which corequisite courses impact various student outcomes.

A final evaluation report will synthesize findings and information from the three evaluation components (quantitative analysis, cost study, and implementation study) and provide an overview of the impact of the legislation. Findings from the final evaluation report will be used for statewide policy and practice considerations by THECB staff, in collaboration with Texas public institutions of higher education. Findings will also be used by THECB staff to help identify best practices in program implementation and scale-up of student participation in corequisite models. These institutional collaborations and THECB analyses will also help inform the legislatively mandated report on Developmental Education, per Rider 32 (85th Texas Legislature, Regular Session).

RFP documentation may be obtained by contacting:

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, TX 78711-2788

(512) 427-6142

theresa.lopez@theccb.state.tx.us

RFP documentation is also located on the THECB's website at <http://www.theccb.state.tx.us/about-us/procurement/> and the Electronic state Business Daily at <http://www.txsmartbuy.com/sp>.

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. CT on March 13, 2020.

TRD-202000587

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 12, 2020



Texas Department of Insurance

Company Licensing

Application for AXA Corporate Solutions Life Reinsurance Company, a foreign life, accident and/or health company, to change its name to Corporate Solutions Life Reinsurance Company. The home office is in Wilmington, Delaware.

Application for Time Insurance Company II, a foreign life, accident and/or health company, to change its name to Time Insurance Company. The home office is in San Juan, Puerto Rico.

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-202000586

James Person

General Counsel

Texas Department of Insurance

Filed: February 12, 2020



Texas Lottery Commission

Scratch Ticket Game Number 2226 "\$250,000 50X CASHWORD"

Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2226 is "\$250,000 50X CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2226 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2226.

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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, BELL SYMBOL, COIN SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL and POT OF GOLD 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. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2226 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BLACKENED SQUARE SYMBOL	
BELL SYMBOL	WINX1
COIN SYMBOL	WINX2
GOLD BAR SYMBOL	WINX3
MONEY BAG SYMBOL	WINX5
STACK OF BILLS SYMBOL	WINX10
POT OF GOLD SYMBOL	WINX50

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 (2226), 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: 2226-0000001-001.

H. Pack - A Pack of "\$250,000 50X CASHWORD" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded 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 "\$250,000 50X CASHWORD" Scratch Ticket Game No. 2226

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. Each Scratch Ticket contains exactly 312 (three hundred twelve) Play Symbols. A prize winner in the "\$250,000 50X CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 2 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in another GAME. Each GAME is played separately. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. GAME 1 and GAME 2 can win by revealing 2 to 11 complete WORDS on each GAME. GAME 3 can win by revealing 2 to 9 complete WORDS. MULTIPLIER BONUS: The player must scratch the MULTIPLIER SYMBOL. The player multiplies the total prize won in GAMES 1, 2 and 3 by the MULTIPLIER SYMBOL found in the legend to win that amount. Revealing a BELL SYMBOL (WINX1) does not multiply winnings in any 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 312 (three hundred twelve) 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; Crossword and Bingo games do not typically have Play Symbol Captions;

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 312 (three hundred twelve) 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 312 (three hundred twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 312 (three hundred twelve) 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 de-

fective 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 Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

D. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

E. CROSSWORD GAMES: No matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v 2.0, dated January 31, 2019.

G. CROSSWORD GAMES: All words will contain a minimum of three (3) letters.

H. CROSSWORD GAMES: All words will contain a maximum of nine (9) letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

K. CROSSWORD GAMES: No consonant will appear more than seven (7) times, no vowel will appear more than ten (10) times in GAME 3.

L. CROSSWORD GAMES: No matching Play Symbols in the YOUR 20 LETTERS play area.

M. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one (1) letter in GAME 1 (11x11), GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

N. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

O. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v.2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. CROSSWORD GAMES: On Non-Winning Tickets, there will be one (1) completed word in GAME 1 and one (1) completed word in GAME 2.

Q. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

R. CROSSWORD GAMES: GAME 1 and GAME 2 will have no more than eleven (11) complete words per grid.

S. CROSSWORD GAMES: GAME 3 will have no more than nine (9) complete words.

T. CROSSWORD GAMES: A Ticket can only win one (1) time per GAME and a total of up to three (3) times per Ticket in accordance with the approved prize structure.

U. CROSSWORD GAMES: Each Ticket in a Pack will have unique GAMES.

V. MULTIPLIER BONUS: The MULTIPLIER BONUS Play Symbols of "BELL" (WINX1), "COIN" (WINX2), "GOLD BAR" (WINX3), "MONEY BAG" (WINX5), "STACK OF BILLS" (WINX10) and "POT OF GOLD" (WINX50) will only be used on winning Tickets, as dictated by the prize structure.

W. MULTIPLIER BONUS: Tickets that do not win in the "MULTIPLIER BONUS" play area will display the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol.

X. MULTIPLIER BONUS: Revealing a "BELL" (WINX1) MULTIPLIER BONUS Play Symbol does not multiply winnings in any GAME.

Y. MULTIPLIER BONUS: Tickets that do not win in GAME 1, GAME 2, or GAME 3 will use the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol in the "MULTIPLIER BONUS" play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 50X CASHWORD" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500 Scratch Ticket Game Prize. 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 "\$250,000 50X CASHWORD" 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 "\$250,000 50X CASHWORD" 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 "\$250,000 50X CASHWORD" 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 "\$250,000 50X CASHWORD" Scratch Ticket

Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

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 18,000,000 Scratch Tickets in Scratch Ticket Game No. 2226. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2226 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	1,980,000	9.09
\$20	1,260,000	14.29
\$30	1,260,000	14.29
\$50	375,000	48.00
\$80	67,500	266.67
\$100	101,250	177.78
\$200	15,750	1,142.86
\$500	3,000	6,000.00
\$1,000	1,800	10,000.00
\$10,000	36	500,000.00
\$250,000	9	2,000,000.00

*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 3.55. 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. 2226 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2226, 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-202000570
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 11, 2020



Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Disposition of Real Estate - Blanco County

Approximately 3.5 Acres at Blanco State Park

In a meeting on March 26, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the sale

of approximately 3.5 acres near Blanco State Park. The narrow riverbank tract is isolated from and not adjacent to the park. The sale tract will be subject to prohibitions on subdivision, development, and native vegetation removal. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov.

Granting of Easement - Lubbock County

Approximately 0.10 Acres at the Texas Parks and Wildlife Department Law Enforcement Office

In a meeting on March 26, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing granting an approximately 0.10-acre utility easement at the Texas Parks and Wildlife Department Law Enforcement Office in Lubbock, Texas. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov.

TRD-202000558

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Supreme Court of Texas

Final Approval of Amendments to Rule 13.1 of the Texas
Rules of Judicial Administration

IN THE SUPREME COURT OF TEXAS

=====
Misc. Docket No. 20-9024
=====

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**FINAL APPROVAL OF AMENDMENTS TO
RULE 13.1 OF THE TEXAS RULES OF JUDICIAL ADMINISTRATION**
=====

ORDERED that:

1. On July 11, 2019, in Miscellaneous Docket No. 19-9053, the Court approved amendments to Rule 13.1 of the Texas Rules of Judicial Administration, to be effective September 1, 2019, and invited public comment.
2. No comments were received, and no additional changes have been made to the rule. This order gives final approval to the amendments set forth in Miscellaneous Docket No. 19-9053.
3. The amendments apply to actions commenced on or after September 1, 2019, or pending on that date, and for which the trial, or any new trial or retrial following a motion, appeal, or otherwise, begins on or after that date.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

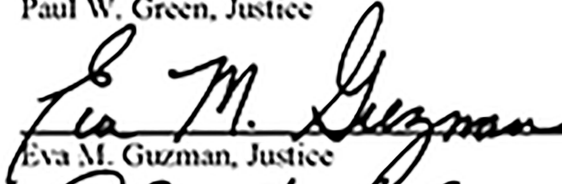
Dated: February 11, 2020



Nathan L. Hecht, Chief Justice



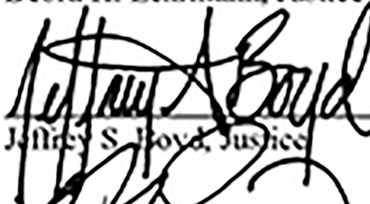
Paul W. Green, Justice



Eva M. Guzman, Justice



Debra H. Lehmann, Justice



Jeffrey S. Boyd, Justice



John D. Devine, Justice



James D. Blacklock, Justice



J. Brent Busby, Justice



Jane N. Bland, Justice

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 12, 2020

◆ ◆ ◆
Texas Water Development Board

Applications Received January 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73882, a request from the Trinity Bay Conservation District, 2500 State Highway 124, Stowell, Texas 77661, received on January 10 2020, for \$3,027,000 in financial assistance from the Clean Water State Revolving Fund for a proposed 0.6 MGD wastewater treatment facility will replace the current lagoon/wetlands treatment operation due to the growing need for wastewater treatment in the region as well as the health and safety concerns that were presented as a result of the flooding caused by Hurricane Harvey.

Project ID #73687, a request from the City of Los Fresnos, 520 East Ocean, Los Fresnos, Texas 78566-3643, received on January 10, 2020, for \$1,600,000 in financial assistance from the Clean Water State Revolving Fund a proposed wastewater improvements which include rehabilitation of existing wastewater infrastructures and expansion of its wastewater collection system to unserved areas.

Project ID #73840, a request from the City of Kerrville, 701 Main Street, Kerrville, Texas 78028, received on January 10, 2020, for \$500,000 in financial assistance from the Clean Water State Revolving Fund to provide construction funding for the permanent replacement of the two recycle water lines.

Project ID #62748, a request from the City of Blanco, P.O. Box 750, Blanco, Texas 78606-0750, received on January 16, 2020, for \$6,550,000 in financial assistance from the Drinking Water State Revolving Fund to refurbish and modernize the wastewater treatment process while treating THM concentration issues, flood proofing/raising facilities above 100 year flood event level, obtain new TCEQ discharge permit, and demolish abandoned components. Improvements would begin at the raw water pump station and continue throughout the treatment process which ends with the on-site 500,000 ground storage tank.

Project ID #73884, a request from the City of Bertram, 110 East Vaughan, Bertram, Texas 78605-1604, received on January 31, 2020,

for \$4,750,000 in financial assistance from the Clean Water State Revolving Fund for replacement of the existing lagoon wastewater treatment system.

Project ID #73885, a request from the City of Athens, 508 East Tyler Street, Athens, Texas 75751, received on January 31, 2020, for \$988,040 in financial assistance from the Clean Water State Revolving Fund for two separate infrastructure improvements to enhance and improve the effectiveness of the Athens North Wastewater Treatment plant. A treatment plant trickling filter will undergo significant rehabilitation and an 8-inch sewer main along Pinkerton Street that feeds the plant will be replaced with a larger line.

TRD-202000542
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: February 10, 2020

◆ ◆ ◆
Workforce Solutions Deep East Texas

RFQ #20-394 Independent Reviewer for Proposal

The Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas is seeking quotes for the Independent Reviewer of Proposals for Child Care Services Request for Proposal Evaluators.

A Request for Proposals (RFP) for Child Care Services Operator will be issued for management and operation for Deep East Texas Local Workforce. In order to provide a thorough evaluation, the Board will utilize the services of independent reviewers.

A copy of the RFQ #20-394 is available on the Board's website at www.detwork.org.

TRD-202000428
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: February 5, 2020

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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