TEXAS REGISTER

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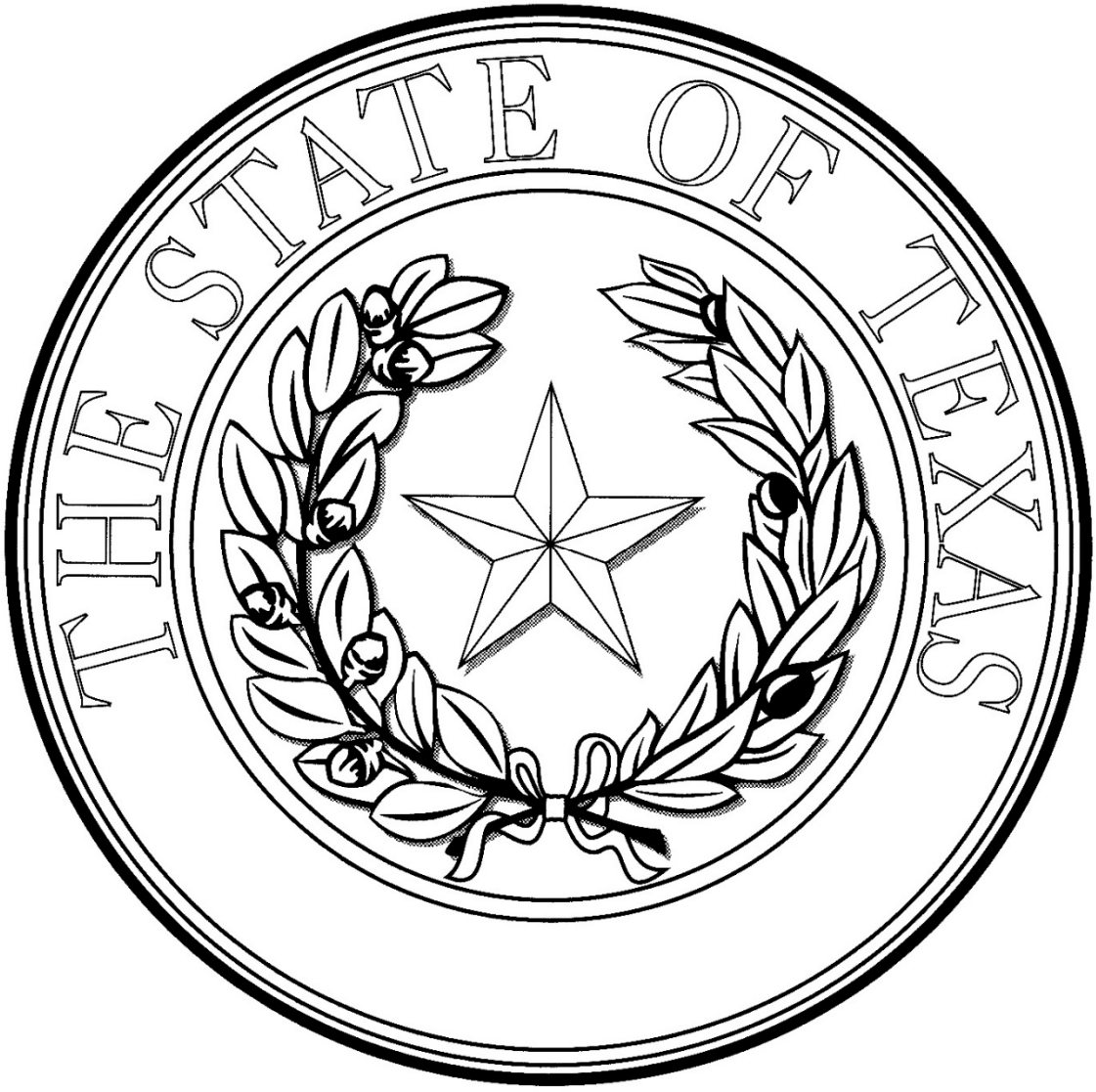

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In This Issue

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 12, 2020

Appointed to the Partnership Advisory Commission, for a term to expire at the pleasure of the Governor, Sarah Hicks of Cedar Park, Texas (replacing John D. Colyandro of Austin).

Appointments for February 20, 2020

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee, for a term to expire January 31, 2025, Cynthia "Cindy" Barberio Payne of Spring Branch, Texas (replacing Angelos G. Angelou of Austin, whose term expired).

Appointments for February 24, 2020

Appointed to the Advisory Council on Postsecondary Education for Persons with Intellectual and Developmental Disabilities pursuant to SB 1017, 86th Legislature, Regular Session, for a term to expire August 31, 2021, Agata K. "Agatha" Thibodeaux of Katy, Texas.

Appointments for February 25, 2020

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2022, Michael A. Ebbeler, Jr. of Austin, Texas (Mr. Ebbeler is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2022, Bobbie Jean Hodges of Fort Worth, Texas (Ms. Hodges is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2022, Elizabeth M. Kendell of San Antonio, Texas (replacing Neva M. Fairchild of Carrollton, whose term expired).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2022, Elizabeth "Lisa" Maciejewski-West of San Angelo, Texas (Ms. Maciejewski-West is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2022, Karen R. Stanfill of Houston, Texas (Ms. Stanfill is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire February 25, 2023, Jennifer R. Clouse of Temple, Texas (Pursuant to the U.S. Rehabilitation Act).

Appointed to the Rehabilitation Council of Texas, for a term to expire February 25, 2023, Gennadiy Goldenshteyn of Dallas, Texas (Pursuant to the U.S. Rehabilitation Act).

Appointed to the Rehabilitation Council of Texas, for a term to expire February 25, 2023, Abdi A. Warsame of Irving, Texas (Pursuant to the U.S. Rehabilitation Act).

Appointed to the Texas Early Learning Council, for a term to expire at the pleasure of the Governor, Sarah "Reagan" Miller of Austin, Texas (replacing Courtney H. Arbour of Austin).

Appointed to the Texas Early Learning Council, for a term to expire at the pleasure of the Governor, Audrey A. Young of Austin, Texas (replacing Ramah G. Leith of Austin).

Appointments for February 26, 2020

Appointed to the One-Call Board of Texas, for a term to expire August 31, 2022, Joe L. Canales of Austin, Texas (replacing Jeffery R. Carroll of Austin, whose term expired).

Appointed to the One-Call Board of Texas, for a term to expire August 31, 2022, Roberto G. "Robert" De Leon of Corpus Christi, Texas (Mr. De Leon is being reappointed).

Appointed to the One-Call Board of Texas, for a term to expire August 31, 2022, Senaida "Sandy" Galvan of San Antonio, Texas (Ms. Galvan is being reappointed).

Appointed to the One-Call Board of Texas, for a term to expire August 31, 2022, Sockalingam "Sam" Kannappan of Houston, Texas (replacing Barry K. Calhoun of Richardson, whose term expired).

Appointments for February 27, 2020

Appointed to the Family Practice Residency Advisory Committee, for a term to expire August 29, 2022, Parrish "Todd" Dorton of Waco, Texas (Mr. Dorton is being reappointed).

Appointed as the Adjutant General of Texas, for a term to expire February 1, 2022, Tracy R. Norris of Austin, Texas (General Norris is being reappointed).

Appointments for February 28, 2020

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2025, Dirrell S. Jones of Farmers Branch, Texas (replacing John W. Griffin, Jr. of Victoria, whose term expired).

Appointments for March 2, 2020

Appointed to the Texas Military Preparedness Commission, for a term to expire February 1, 2023, Benjamin "Ben" Miranda, Jr. of El Paso, Texas (replacing Alton F. "Tom" Thomas, Jr. of El Paso, who resigned).

Appointments for March 4, 2020

Designated as presiding officer of the Governor's Broadband Development Council, for a term to expire at the pleasure of the Governor, William C. "Bill" Sproull of Richardson , Texas.

Appointments for March 9, 2020

Appointed as the Inspector General for Health and Human Services, for a term to expire February 1, 2021, Sylvia Hernandez Kauffman of Austin, Texas (Ms. Kauffman is being reappointed).

TRD-202001131

♦ ♦ ♦

Proclamation 41-3718

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of February, 2020.

Greg Abbott, Governor

TRD-202001127

♦ ♦ ♦

Proclamation 41-3719

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, certified on January 31, 2020, that exceptional drought conditions posed a threat of imminent disaster in Anderson, Bell, Blanco, Burleson, Burnet, Cherokee, Dimmit, Freestone, Henderson, Jackson, Karnes, Kinney, Llano, Maverick, Navarro, Real, Smith, Uvalde, Val Verde, Williamson, Zapata," and Zavala counties. I hereby certify that exceptional drought conditions continue to pose a threat of imminent disaster in Burleson, Dimmit, Jackson, Karnes, Maverick, Uvalde, Zapata, and Zavala counties, and that the conditions also now threaten Atascosa, Bee, Caldwell, Colorado, DeWitt, Frio, Gonzales, Guadalupe, Jim Hogg, La Salle, Lavaca, Live Oak, Starr, Webb, Wharton, and Wilson counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Atascosa, Bee, Burleson, Caldwell, Colorado, DeWitt, Dimmit, Frio, Gonzales, Guadalupe, Jackson, Jim Hogg, Karnes, La Salle, Lavaca, Live Oak, Maverick, Starr, Uvalde, Webb, Wharton, Wilson, Zapata, and Zavala counties based on the existence of such threat.

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 2nd day of March, 2020.

Greg Abbott, Governor

TRD-202001128

♦ ♦ ♦

Proclamation 41-3720

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the novel coronavirus (COVID-19) has been recognized globally as a contagious respiratory virus; and

WHEREAS, as of March 13, 2020, there are more than 30 confirmed cases of COVID-19 located in multiple Texas counties; and

WHEREAS, there are more than 50 Texans with pending tests for COVID-19 in Texas; and

WHEREAS, some schools, universities, and other governmental entities are beginning to alter their schedules, and some venues are beginning to temporarily close, as precautionary responses to the increasing presence of COVID-19 in Texas; and

WHEREAS, costs incurred to prepare for and respond to COVID-19 are beginning to mount at the state and local levels; and

WHEREAS, the State of Texas has already taken numerous steps to prepare for COVID-19, such as increasing laboratory testing capacity, coordinating preparedness efforts across state agencies, and working with local partners to promote appropriate mitigation efforts; and

WHEREAS, it is critical to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

WHEREAS, declaring a state of disaster will facilitate and expedite the use and deployment of resources to enhance preparedness and response.

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that COVID-19 poses an imminent threat of disaster. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby declare a state of disaster for all counties in Texas.

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of March, 2020.

Greg Abbott, Governor

TRD-202001129

♦ ♦ ♦

Proclamation 41-3721

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of March, 2020.

Greg Abbott, Governor

TRD-202001156

♦ ♦ ♦

Proclamation 41-3722

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Kirk Watson, and its acceptance, has caused a vacancy to exist in Texas State Senate District No. 14, which consists of Bastrop and parts of Travis counties; and

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

WHEREAS, the vacancy occurred on February 25, 2020, and, therefore, pursuant to Section 203.004(a) of the Texas Election Code, the special election would ordinarily be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and, under the authority vested in the Governor by Section 418.014 of the Texas Government Code, declared a state of disaster for all counties in Texas; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; and

WHEREAS, Saturday, May 2, 2020, is the first uniform election date occurring on or after the 36th day after the date the special election is being ordered, but holding the special election on that date would prevent, hinder, or delay necessary action in coping with the declared disaster by placing the public's health at risk and threatening to worsen the ongoing public health crisis; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that the Governor may order an emergency special election before the November uniform election date; and

WHEREAS, the circumstances presented by COVID-19 that justified declaring a state of disaster also constitute an emergency within the meaning of Section 41.0011 of the Texas Election Code.

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby suspend Section 203.004 of the Texas Election Code to the extent necessary to avoid holding a special election for a vacancy in the legislature on or before May 2, 2020, and I do hereby order the special election to be held in Texas State Senate District No. 14 on Tuesday, July 14, 2020, for the purpose of electing a state senator to serve out the unexpired term of the Honorable Kirk Watson.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state beginning Wednesday, April 29, 2020, with a deadline of no later than 5:00 p.m. on Wednesday, May 13, 2020.

Early voting by personal appearance shall begin on Monday, June 29, 2020, in accordance with Sections 85.001(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judges of all counties contained within Texas State Senate District No. 14, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State Senate District No. 14 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of March, 2020.

Greg Abbott, Governor

TRD-202001157

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-0337-KP

Requestor:

The Honorable Tracy O. King

Chair, House Committee on Licensing and Administrative Procedures

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the State may require title and registration for three-wheeled, electric, low-speed vehicles (RQ-0337-KP)

Briefs requested by April 14, 2020

RQ-0338-KP

Requestor:

The Honorable Geanie W. Morrison

Chair, House Local & Consent Calendars Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county investigator to carry a firearm in the courtroom (RQ-0316-KP)

Briefs requested by April 16, 2020

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

TRD-202001160
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 17, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0294

The Honorable Poncho Nevárez

Chair, Committee on Homeland Security and Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a real estate inspector is authorized to perform inspections of sewer lines by camera (RQ-0307-KP)

S U M M A R Y

Occupations Code chapter 1102's express authorization for a real estate inspector to provide an opinion on real estate's "plumbing systems" likely includes a camera inspection. Occupations Code chapter 1301 requires a person to have a license to engage in activities that constitute plumbing. The Texas State Board of Plumbing Examiners has by rule defined the "service" of plumbing to include performing a camera inspection. To the extent this rule requires a real estate inspector to get a plumber's license to do a job within the scope of his or her real estate inspector's license, the rule impermissibly imposes an additional burden, limit, or condition in addition to what the Legislature has required. Accordingly, a court would have a basis to conclude that the rule is invalid, as applied to camera inspections performed by real estate inspectors.

Opinion No. KP-0295

The Honorable Renee Ann Mueller

Washington County Attorney

100 East Main Street, Suite 200

Brenham, Texas 77833

Re: Whether revenue generated from inmates' use of a PIN debit system to pay for phone time must be credited to the county jail commissary account or to the county general fund (RQ-0309-KP)

S U M M A R Y

Revenue derived from money allocated from an inmate trust fund account to a phone service provider's PIN debit account without passing through a facility's commissary account as described in section 351.0415 of the Local Government Code must be credited to the general fund of the county, not to the commissary funds under the exclusive control of the sheriff.

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

TRD-202001161

Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 17, 2020

♦ ♦ ♦

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

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.57, concerning Qualified Accounting Courses.

Reasoned Justification

A number of higher education institutions in Texas are converting from a physical class room presence to online electronic learning in order to minimize the risk of exposure, contraction and spread of the COVID-19 virus among on-campus students, faculty and educational institution employees. Board rules currently require an applicant to take the Certified Public Accountancy Exam to have a minimum of fifteen classroom hours of advanced accounting courses in order to be eligible to take the exam. Not recognizing the education obtained in an online course would imperil the welfare of students receiving an accredited education. The Board has therefore enacted this emergency rulemaking in order to protect the public welfare.

The Board was engaged in the process of considering the elimination of the fifteen hour of in-person advanced accounting course requirement when this emergency occurred and a similar rule may be adopted on a permanent basis. The statute affected by this emergency rulemaking is Chapter 901 of the Texas Occupations Code.

Statutory Authority

This emergency rulemaking is enacted pursuant to the authority granted in §2001.034 Texas Government Code.

§511.57. Qualified Accounting Courses.

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 30 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title, and after obtaining the degree, complete the requisite 30 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this title, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 30 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) of this section. The hours from a course that has been repeated will be counted only once toward the required 30 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. [~~At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution.~~]

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Content Specifications Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting;

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(11) fraud examination;

(12) international accounting and financial reporting;

(13) an accounting internship program (not to exceed 3 semester credit hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester credit hours of upper division accounting course work has been completed; and

(J) the internship course shall be the equivalent of a traditional course; and

(14) at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content.

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) An ethics course required in §511.58(c) of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses) shall not be used to meet the accounting course definition in subsection (e) of this section.

(k) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

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

Filed with the Office of the Secretary of State on March 12, 2020.

TRD-202001091
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 12, 2020
Expiration date: July 9, 2020
For further information, please call: (512) 305-7842

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 35. EMERGENCY RULES

SUBCHAPTER A. COVID-19 EMERGENCY RULES

28 TAC §35.1

The Commissioner of Insurance adopts new 28 TAC §35.1, concerning Telemedicine and Telehealth Services, on an emergency basis, effective immediately. The emergency adoption is necessary to ensure adequate access to telemedicine medical and telehealth service in response to the COVID-19 pandemic.

REASONED JUSTIFICATION. On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to the COVID-19 pandemic. As the governor noted, it is critical to take steps to prepare for, respond to, and mitigate the spread of COVID-19, particularly by increasing Texans' access to treatment and testing. Telemedicine has emerged as a vital tool in combating the spread of infectious diseases, in part because

it limits physical contact between a patient and their physician and other patients. Limiting person-to-person contact is key to slowing the spread of this virus.

It is critical to preserve physician capacity during the COVID-19 disaster, thus physicians' exposure to the virus must be reduced to the greatest extent possible. Furthermore, the efficient use of telemedicine would allow physicians to focus more of their time on those in greatest need of in-person care. Finally, telemedicine could allow those physicians who do become ill to continue treating patients in some circumstances.

Unfortunately, limited reimbursement rates for telemedicine services serve as a barrier to the expanded use of such technology because physicians are reluctant to accept significantly reduced payment for such services. Some physicians may also be reluctant to engage in telemedicine because of health benefit plans' different documentation requirements for telemedicine services as opposed to in-person services.

The new rule is intended to reduce these barriers and expand telemedicine by implementing parity with payment and documentation requirements applicable to in-person services. Under the rule, services that are the same must be reimbursed at the same rate whether provided in-person or through telemedicine. Similarly, the new rule does not permit health benefit plans to require documentation for telemedicine services beyond what the plan already requires for in-person services.

The new rule also reflects requirements from Texas Insurance Code Chapter 1455, including requirements that: (1) require health benefit plans to provide coverage for covered services or procedures delivered by telemedicine on the same basis and to the same extent that the plan provides coverage for the same service or procedure in an in-person setting; and (2) prohibit health benefit plans from limiting, denying, or reducing coverage based on the telemedicine platform used by the physician, with limited exceptions.

An emergency rule is necessary

Pursuant to Government Code §§2001.034 and 2001.036(a)(2), the new rules are adopted on an emergency basis and with an immediate effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

As noted in Governor Abbott's disaster declaration, COVID-19 poses an imminent threat to the public health and welfare. COVID-19 is spreading at an exponential rate, and it is vital that actions be taken to prepare for, respond to, and mitigate the spread of the virus. The new rule is adopted to eliminate barriers to the expanded use of telemedicine, which is widely recognized as an effective tool to combat the spread of COVID-19. Therefore, it is vital to the public health and welfare that the new rule goes into effect immediately.

Under Government Code §2001.034, this emergency rule may not be in effect for longer than 120 days, with the possibility for a 60-day extension.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §36.001 and §1455.005; and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Insurance Code §1455.005 provides that the Commissioner may adopt rules as necessary to implement Insurance Code Chapter 1455, concerning Telemedicine and Telehealth, subject to Occupations Code §111.004.

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

§35.1. Telemedicine Medical and Telehealth Services.

(a) This section applies as follows:

(1) This section applies to health benefit plans as specified in Insurance Code §1455.002 and §1455.003.

(2) The requirements of this section apply only to a health care service or procedure delivered on or after the effective date of this section.

(b) Words and terms defined in Insurance Code §1455.001 have the same meaning when used in this section. The term "health professional" includes a mental health professional providing services under 22 TAC §174.9.

(c) A health benefit plan must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or telehealth service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting.

(d) A health benefit plan must reimburse a preferred or contracted health professional for providing a covered health care service or procedure to a covered patient as a telemedicine medical service or telehealth service on the same basis and at least at the same rate that the plan is responsible for reimbursement to that health professional for the same service or procedure in an in-person setting.

(e) Notwithstanding subsection (d) of this section, a health benefit plan is not required to pay more than the billed charge on a claim.

(f) Except as provided by Insurance Code §1455.004(c), to the extent §1455.004(c) is not suspended, a health benefit plan may not limit, deny, or reduce coverage for a covered health care service or procedure delivered as a telemedicine medical service or telehealth service based on the health professional's choice of platform for delivering the service or procedure.

(g) For purposes of processing payment of a claim, a health benefit plan may not require a health professional to provide documentation of a health care service or procedure delivered as a telemedicine medical service or telehealth service beyond what is required for the same service or procedure in an in-person setting.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

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

Filed with the Office of the Secretary of State on March 17, 2020.

TRD-202001162

James Person
General Counsel
Texas Department of Insurance
Effective date: March 17, 2020
Expiration date: July 14, 2020
For further information, please call: (512) 676-6584

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter B, Quarantine Requirements, §20.13 and §20.14; and amendments to Subchapter C, §20.21, relating to Cotton Producer Advisory Committees.

The proposed amendments to §20.13 and §20.14 were requested by the Texas Boll Weevil Eradication Foundation (the Foundation). The Foundation's Technical Advisory Committee (TAC) recommended a change in the quarantine status of the Northern Blacklands (NBL) and Southern Blacklands (SBL) boll weevil eradication zones, from functionally eradicated to eradicated, to the Foundation Board of Directors at their annual meeting on November 13, 2019, in Abilene, Texas, and the Foundation Board of Directors agreed with their recommendation.

Proposed amendments change the boll weevil quarantine status of the NBL and SBL boll weevil eradication zones from functionally eradicated to eradicated. The proposed amendments are necessary to prevent the re-infestation of boll weevils in the NBL and SBL from areas in Texas currently capturing boll weevils. The proposed amendments will provide protection to the NBL and SBL eradication zones by regulating the movement of articles that could transport boll weevil and re-infest the NBL and SBL.

The proposed amendment to §20.21 modifies the term length of producer members of the Cotton Producer Advisory Committee (CPAC) of Pest Management Zones from two years to four years. Producer members of the CPAC are most often re-appointed to subsequent terms without contest. The proposed amendment to extend the term length of producer members of a CPAC from two years to four years increases the effective enforcement and administration of the cotton pest program.

Dale Scott, Director of Environmental & Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government.

Mr. Scott has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed rules will be the continued eradication of cotton boll weevil in Texas. There will be minimal economic impact on small businesses or persons required to comply with the proposed rules.

Mr. Scott has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

(1) no new or current government or Department programs will be created or eliminated;

(2) no employee positions will be created, nor will any existing Department staff positions be eliminated; and

(3) there will not be an increase in future legislative appropriations to the Department.

Additionally, Mr. Scott has determined that for the first five years the proposed rules are in effect:

(1) there will not be an increase in fees paid to the Department;

(2) there will be no new regulations created by the proposal;

(3) there will be no expansion, limitation or repeal of existing regulations;

(4) there will be an increase to the number of individuals subject to the proposed rule's applicability, as there are additional restrictions on the movement of regulated articles to the NBL and SBL; and

(5) the proposal will have a positive impact on the Texas economy, as it will reduce the potential of boll weevil re-infestation in the NBL and SBL.

Written comments on the proposal may be submitted to Dale Scott, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: *RuleComments@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.13, §20.14

The amendments are proposed under §74.009 of the Texas Agriculture Code, which requires the Department employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful; §74.122, which authorizes the Department to adopt rules relating to quarantining areas of this state that are infested with the boll weevil; §74.003, which authorizes the Department to appoint cotton producers to an administrative committee that shall govern each pest management zone; and §74.006, which authorizes the Department to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.13. Functionally Eradicated Areas.

(a) (No change.)

(b) The [~~Northern Blacklands (NBL), Southern Blacklands (SBL),~~] Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021, have been declared as functionally eradicated by the Commissioner.

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

§20.14. Eradicated Areas.

(a) (No change.)

(b) The West Texas Maintenance Area, as provided in §3.702 (relating [~~related~~] to West Texas Maintenance Area), the Northern Blacklands (NBL) Boll Weevil Eradication Zone, as provided in §3.116 (relating to Northern Blacklands Boll Weevil Eradication Zone), and the Southern Blacklands (SBL) Boll Weevil Eradication Zone, as provided in §3.114 (relating to Southern Blacklands Boll Weevil Eradication Zone), have [~~has~~] been declared as eradicated by the Commissioner.

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

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

Filed with the Office of the Secretary of State on March 16, 2020.

TRD-202001133
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 463-7476

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SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.21

The amendments are proposed under §74.009 of the Texas Agriculture Code, which requires the Department employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful; §74.003, which authorizes the Department to appoint cotton producers to an administrative committee that shall govern each pest management zone; and §74.006, which authorizes the Department to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.21. Cotton Producer Advisory Committees.

(a) (No change.)

(b) The commissioner shall appoint the producer members of the Cotton Producer Advisory Committee for a term of four [~~two~~] years expiring on December 31 of the fourth [~~second~~] year. Appointees may be selected from a pool of nominees submitted by a certified cotton producer organization within the pest management zone, or nominees may be submitted for each individual county by: a County Extension Agriculture Committee; a county FSA Committee; an established agriculture business that is representative of the entire county; or any other established business or non-profit organization as designated by the department.

(c) (No change.)

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

Filed with the Office of the Secretary of State on March 16, 2020.

TRD-202001134
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 463-7476

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §1.5 and §1.65.

This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §1.65(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §1.5 for Texas Guaranteed Student Loan Corporation and TGSLC.

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §1.65(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §1.65(d). This subsection identifies the process used by the Board to deny registration renewal for an architect registrant who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §1.5. Since reference to these terms within the

board's rules is limited to §1.65(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 37.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

STATUTORY AUTHORITY

The amendment of §1.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.5. Terms Defined Herein.

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

(1) - (68) (No change.)

~~[(69)]~~ ~~[Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.]~~

~~[(70)~~ ~~[TGSLC--Texas Guaranteed Student Loan Corporation.]~~

(69)~~[(71)]~~ Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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-202001099
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-8519

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION.

22 TAC §1.65

STATUTORY AUTHORITY

The amendment of §1.65 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities

from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.65. Annual Renewal Procedure.

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

~~[(d)] [If the Board receives official notice that an Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Architect's registration unless:]~~

~~[(1)] [the renewal is the first renewal following the Board's receipt of official notice regarding the default;]~~

~~[(2)] [the Architect presents to the Board a certificate from TGSLC certifying that the Architect has entered into a repayment agreement for the defaulted loan; or]~~

~~[(3)] [the Architect presents to the Board a certificate from TGSLC certifying that the Architect is not in default on a loan guaranteed by TGSLC.]~~

(d)~~[(e)]~~ If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's registration.

(e)~~[(f)]~~ If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §1.21 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §1.22 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the 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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TRD-202001100
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-8519

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CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§1.26, 1.27, 1.149, and 1.153.

This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of architects. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §1.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as an architect.

The board proposes the amendment of §1.27, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §1.27 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue an architectural registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §1.27. Therefore, the proposed amendment would eliminate the rule's reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §1.27(a)(3) with the updated reference to "Article 42A.054" of the same. Lastly, the board proposes to correct an error in the last sentence of §1.27(e) by replacing the word "provided" with "provide."

The board proposes the amendment of §1.149, related to Criminal Convictions. Subsection (a) is proposed for amendment to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) would also be amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Proposed amendments to subsections (b)(3) and (4) would implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Proposed amendments to subsections (c) and (d) would implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is proposed for amendment to implement changes to Tex.

Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board proposes the amendment of §1.153, relating to Deferred Adjudication. These amendments are proposed to implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in House Bill 1342.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.26, §1.27

STATUTORY AUTHORITY

The amendments to §§1.26 and 1.27 are proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.26. Preliminary Evaluation of Criminal History.

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

(c) Within 90 days after receiving a request which complies with subsection (b) of this section, the executive director shall issue a criminal history evaluation letter which states:

(1) a determination that a ground for ineligibility based upon criminal conduct does not exist; or

(2) a determination that the requestor is ineligible due to criminal conduct and a specific explanation of the basis for that determination, including any factor considered under §1.149(c) or (d) of this chapter that served as the basis for the determination [~~the relationship between the conduct in question and the Practice of Architecture~~].

(d) - (g) (No change.)

§1.27. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Architecture as determined by the executive directory under §1.149 of this chapter (relating to Criminal Convictions);

[(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;]

(2) [(3)] is not an offense listed in Article 42A.054 [§3g, Article 42.12], Code of Criminal Procedure; and

(3) [(4)] is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

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

(d) A provisional Registrant who is subject to community supervision, mandatory supervision, or parole shall provide the Board name and contact information of the probation or parole department to which the provisional Registrant reports. The Board shall provide [provided] notice to the department upon the issuance of the provisional Certificate of Registration, as well as any terms, conditions or limitations upon the provisional Registrant's practice.

(e) (No change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149, §1.153

STATUTORY AUTHORITY

The amendments to §§1.149, and 1.153 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.149. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §1.27 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of an Architect;

[(2) the offense does not directly relate to the duties and responsibilities of an Architect and was committed within five (5) years before the date the person applied for registration as an Architect;]

(2) [(3)] the offense is listed in Article 42A.054 [§3g, Article 42.12], Texas Code of Criminal Procedure; or

(3) [(4)] the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as an Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact an Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of an Architect.]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5)[~~(4)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of an Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of an Architect, the executive director and the Board shall [~~will~~] consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice architecture;

(3) the extent to which architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; and

(4) the relationship of the crime to the ability[~~,~~] or capacity[~~, or fitness~~] required to perform the duties and discharge the responsibilities of an Architect; and[~~.~~]

(5) any correlation between the elements of the crime and the duties and responsibilities of an Architect.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of an Architect, [~~In addition to the factors that may be considered under subsection (c) of this section,~~] the executive director and the Board shall consider the following in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed [~~and the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity~~];

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

(4) [~~(3)~~] the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) [~~(4)~~] evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated or after release;

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

(7) [~~(5)~~] other evidence of the Applicant's or Registrant's [~~present~~] fitness to practice as an Architect, including letters of recommendation.[~~from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and~~

[~~(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.~~]

(e) - (g) (No change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(i) (No change.)

§1.153. Deferred Adjudication.

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described by subsection (a) of this section if:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or

(ii) a conviction for the offense would make the person ineligible for registration by operation of law; and

(2) after consideration of the factors described by §1.149(c) or (d) of this chapter, the executive director or the Board determines that:

(A) the person may pose a continued threat to public safety; or

(B) employment of the person as an Architect would create a situation in which the person has an opportunity to repeat the prohibited conduct.

[~~(b) Notwithstanding subsection (a) of this section, the executive director may consider a person to have been convicted for committing a criminal offense upon a finding that:~~]

[~~(1) the person may pose a continued threat to the public; or~~]

[(2) registration would create an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere.]

(c) (No change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §3.5 and §3.65.

This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §3.65(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §3.5 for Texas Guaranteed Student Loan Corporation and TGSLC.

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §3.65(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §3.65(d). This subsection identifies the process used by the Board to deny registration renewal for a landscape architect registrant who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §3.5. Since reference to these terms within the board's rules is limited to §3.65(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 37.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

STATUTORY AUTHORITY

The amendment of §3.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.5. Terms Defined Herein.

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

(1) - (60) (No change.)

~~[(61) Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.~~

~~(62) TGSLC--Texas Guaranteed Student Loan Corporation.]~~

(61) [~~(63)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.65

STATUTORY AUTHORITY

The amendment of §3.65 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.65. Annual Renewal Procedure.

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

~~[(d) If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Landscape Architect's registration unless:~~

~~(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;~~

~~(2) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or~~

~~(3) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect is not in default on a loan guaranteed by TGSLC.]~~

(d) [~~(e)~~] If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect's registration.

(e) [~~(f)~~] If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §3.21 of this title (regarding Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §3.22 of this title (regarding Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the 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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Lance Brenton
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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.26, §3.27

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§3.26, 3.27, 3.149, and 3.153.

This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of landscape architects. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §3.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as an landscape architect.

The board proposes the amendment of §3.27, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §3.27 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue a landscape architect registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §3.27. The proposed amendment would eliminate the rule's reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §3.27(a)(3) with the correct reference to "Article 42A.054" of the same.

The board proposes the amendment of §3.149, related to Criminal Convictions. Subsection (a) is proposed for amendment to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) would also be amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Proposed amendments to subsections (b)(3)&(4) would implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Proposed amendments to subsections (c) and (d) would implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is proposed for amendment to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board proposes the amendment of §3.153, relating to Deferred Adjudication. These amendments are proposed to implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in House Bill 1342.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, microbusinesses, 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare

a local employment impact statement under Government Code §2001.022.

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The amendments to §3.26 and §3.27 are proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.26. Preliminary Evaluation of Criminal History.

(a) - (b) (No Change.)

(c) Within 90 days after receiving a request which complies with subsection (b) of this section, the executive director shall issue a criminal history evaluation letter which states:

(1) a determination that a ground for ineligibility based upon criminal conduct does not exist; or

(2) a determination that the requestor is ineligible due to criminal conduct and a specific explanation of the basis for that determination, including any factor considered under §3.149(c) or (d) of this chapter (relating to Criminal Convictions) that served as the basis for the determination [~~the relationship between the conduct in question and the practice of Landscape Architecture~~].

(d) - (g) (No Change.)

§3.27. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Landscape Architecture as determined by the executive director under §3.149 of this chapter (relating to Criminal Convictions);

[~~(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;~~]

(2) [~~(3)~~] is not an offense listed in Article 42A.054 [~~§3g, Article 42.12~~], Code of Criminal Procedure; and

(3) [~~(4)~~] is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) - (e) (No Change.)

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

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149, §3.153

STATUTORY AUTHORITY

The amendments to §3.149 and §3.153 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§ 53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.149. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §3.27 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of a Landscape Architect;

[~~(2) the offense does not directly relate to the duties and responsibilities of a Landscape Architect and was committed within five (5) years before the date the person applied for registration as a Landscape Architect;~~]

(2) [~~(3)~~] the offense is listed in Article 42A.054 [~~§3g, Article 42.12~~], Texas Code of Criminal Procedure; or

(3) [~~(4)~~] the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as a Landscape Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose

of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [~~The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of a Landscape Architect.~~]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5) [~~(4)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of a Landscape Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of a Landscape Architect, the executive director and the Board shall [~~will~~] consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice Landscape Architecture;

(3) the extent to which landscape architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; [~~and~~]

(4) the relationship of the crime to the ability or[~~,~~] capacity[~~, or fitnesss~~] required to perform the duties and discharge the responsibilities of a Landscape Architect; and

(5) any correlation between the elements of the crime and the duties and responsibilities of a Landscape Architect.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of a Landscape Architect [~~In addition to the factors that may be considered under subsection (c) of this section~~], the executive director and the Board shall consider the following in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed;

(3) [~~and~~] the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(4) [~~(3)~~] the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) [~~(4)~~] evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated or after release;

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

(7) [~~(5)~~] other evidence of the Applicant's or Registrant's [~~present~~] fitness to practice as a Landscape Architect, including letters of recommendation. [~~from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and~~]

[~~(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.~~]

(e) - (g) (No Change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court

of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(i) (No Change.)

§3.153. Deferred Adjudication.

(a) (No Change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of [~~for committing~~] a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described by subsection (a) of this section if [~~upon a finding that~~]:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or

(ii) a conviction for the offense would make the person ineligible for registration by operation of law; and

(2) after consideration of the factors described by §3.149(c) or (d) of this chapter, the executive director or the Board determines that:

(A) [~~(1)~~] the person may pose a continued threat to the public; or

(B) [~~(2)~~] employment of the person as a Landscape Architect [~~registration~~] would create a situation in which the person has an opportunity to repeat the prohibited conduct [~~an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere~~].

(c) (No Change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §5.5 and §5.75.

This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §5.75(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §5.5 for Texas Guaranteed Student Loan Corporation and TGSLC.

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §5.75(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §5.75(d). This subsection identifies the process used by the Board to deny registration renewal for a registered interior designer who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §5.5. Since reference to these terms within the board's rules is limited to §5.75(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 37.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

STATUTORY AUTHORITY

The amendment of §5.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate registered interior design and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.5. Terms Defined Herein.

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

(1) - (54) (No change.)

~~[(55)] [Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.]~~

~~[(56)] [TGSLC--Texas Guaranteed Student Loan Corporation.]~~

(55)[~~(57)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.75

STATUTORY AUTHORITY

The amendment of §5.75 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate registered interior design and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.75. Annual Renewal Procedure.

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

~~[(d)] [If the Board receives official notice that a Registered Interior Designer has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Registered Interior Designer's registration unless:]~~

~~[(1)] [the renewal is the first renewal following the Board's receipt of official notice regarding the default;]~~

~~[(2)] [the Registered Interior Designer presents to the Board a certificate from TGSLC certifying that the Registered Interior Designer has entered into a repayment agreement for the defaulted loan; or]~~

~~[(3)] [the Registered Interior Designer presents to the Board a Certificate from TGSLC certifying that the Registered Interior Designer is not in default on a loan guaranteed by TGSLC.]~~

(d)[~~(e)~~] If the Board receives official notice that a Registered Interior Designer has failed to pay court ordered child support, the Board may be prohibited from renewing the Registered Interior Designer's registration.

(e)[~~(f)~~] If a registration is not renewed within two (2) years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expi-

ration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §5.31 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §5.32 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the 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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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§5.36, 5.37, 5.158, and 5.162.

This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of registered interior designers. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §5.36, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as a registered interior designer.

The board proposes the amendment of §5.37, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §5.37 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue an interior design registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §5.37. The proposed amendment would eliminate the rule's reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §5.37(a)(3) with the correct reference to "Article 42A.054" of the same.

The board proposes the amendment of §5.158, related to Criminal Convictions. Subsection (a) is proposed for amendment to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) would also be amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Proposed amendments to subsections (b)(3)&(4) would implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Proposed amendments to subsections (c) and (d) would implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is proposed for amendment to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board proposes the amendment of §5.162, relating to Deferred Adjudication. These amendments are proposed to implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the pro-

posed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in House Bill 1342.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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 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.

TAKINGS IMPACT ASSESSMENT

The agency 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.36, §5.37

STATUTORY AUTHORITY

The amendments to §5.36 and §5.37 are proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.36. Preliminary Evaluation of Criminal History.

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

(c) Within 90 days after receiving a request which complies with subsection (b) of this section, the executive director shall issue a criminal history evaluation letter which states:

(1) a determination that a ground for ineligibility based upon criminal conduct does not exist; or

(2) a determination that the requestor is ineligible due to criminal conduct and a specific explanation of the basis for that determination, including any factor considered under §5.158(c) or (d) of this chapter that served as the basis for the determination [~~the relationship between the conduct in question and the practice of Interior Design~~].

(d) - (g) (No change.)

§5.37. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Applicant who has been convicted of an offense that:

(1) is not directly related to the Practice of Interior Design as determined by the executive director under §5.158 of this chapter (relating to Criminal Convictions);

[~~(2) was committed earlier than five (5) years before the date the Applicant filed an application for registration;~~]

(2) [~~(3)~~] is not an offense listed in Article 42A.054 [~~§3g, Article 42.12~~], Code of Criminal Procedure; and

(3) [~~(4)~~] is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

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

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

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158, §5.162

STATUTORY AUTHORITY

The amendments to §5.158, and §5.162 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the

practice of registered interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§ 53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§ 53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.158. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §5.37 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of a Registered Interior Designer;

~~[(2) the offense does not directly relate to the duties and responsibilities of a Registered Interior Designer and was committed within five (5) years before the date the person applied for registration as a Registered Interior Designer;]~~

(2) [~~(3)~~] the offense is listed in Article 42A.054 [~~§3g, Article 42.12~~], Texas Code of Criminal Procedure; or

(3) [~~(4)~~] the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as a Registered Interior Designer or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [~~The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of a Registered Interior Designer.~~]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5) [~~(4)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of a Registered Interior Designer, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of a Registered Interior Designer, the executive director and the Board shall [~~will~~] consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice Interior Design;

(3) the extent to which Interior Design registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; [~~and~~]

(4) the relationship of the crime to the ability[~~,~~] or capacity[~~, or fitness~~] required to perform the duties and discharge the responsibilities of a Registered Interior Designer; and

(5) any correlation between the elements of the crime and the duties and responsibilities of a Registered Interior Designer.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of a Registered Interior Designer [~~In addition to the factors that may be considered under subsection (c) of~~

~~this section~~], the executive director and the Board shall consider the following [~~in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination~~]:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed;

(3) [~~and~~] the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(4) [~~(3)~~] the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) [~~(4)~~] evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated of after release;

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

(7) [~~(5)~~] other evidence of the Applicant's or Registrant's [~~present~~] fitness to practice as a Registered Interior Designer, including letters of recommendation. [~~from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and~~

[~~(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered~~].

(e) - (g) (No change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(i) (No change.)

§5.162. Deferred Adjudication.

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of [~~for committing~~] a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described by subsection (a) of this section if [~~upon a finding that~~]:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or

(ii) a conviction for the offense would make the person ineligible for registration by operation of law; and

(2) after consideration of the factors described by §5.158(c) or (d) of this chapter, the executive director or the Board determines that:

(A) the person may pose a continued threat to [~~the~~] public safety; or

(B) [~~(2)~~] employment of the person as a Registered Interior Designer [~~registration~~] would create a situation in which the person has an opportunity to repeat the prohibited conduct [~~an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere~~].

(c) (No change.)

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

Filed with the Office of the Secretary of State on March 12, 2020.

TRD-202001097
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-8519

PART 9. TEXAS MEDICAL BOARD

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas Medical Board (Board) proposes amendments to 22 TAC §166.2 concerning Continuing Medical Education.

Section 166.2, relating to Continuing Medical Education, is proposed for amendment to require at least two hours of continuing medical education (CME) training in topics related to the prescription of opioids and other controlled substances. The amendments further proposed language requiring the completion of a course in the topic human trafficking prevention awareness. The amendments are proposed in accordance with four bills passed in the 2019 legislative session. The Board proposes to require the education for all physicians, rather than create a difficult to follow set of rules based on variables such as license issuance date, license renewal date, type of practice and issuance of DEA registration. The Board further believes that requiring all physicians to complete the new education requirement fulfills legislative intent and better protects the public.

The public benefit anticipated as a result of these rules will be to increase and enhance physician knowledge of human trafficking prevention and appropriate opioid and controlled substance prescribing, which are critical health and social issues currently affecting Texas. Requiring physicians to complete such education will decrease prescription drug abuse and diversion and help to combat human trafficking.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the subsection as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be as stated above.

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

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

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

(5) The proposed rule creates new regulations.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act. The amendments are further proposed under the authority of House Bills 2059, 2174, 2454, and 3285 (86th Texas Legislature, R.S.). No other statutes, articles or codes are affected by this proposal.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories and topics:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of the following topics:

(A) best practices, alternatives treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments;

(B) safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:

(i) standards of care;

(ii) identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substances; and

(C) prescribing and monitoring of controlled substances.

(D) For physicians practicing in pain clinics, the hours required under this subparagraph shall be credited towards the 10 hours of required continuing medical education related to pain management

required under 22 TAC Chapter 195.4(e), relating to Operation of Pain Management Clinics.

(E) The hours required under this subparagraph may be designated for medical ethics or professional responsibility credit for purposes of compliance with paragraph (2) of this subsection.

(4) As part of the 24 formal credits of CME required under paragraph (1) of this subsection, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed. The course shall be designated by the board for medical ethics or professional responsibility credit for the purposes of compliance with paragraph (2) of this subsection.

(5) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(6) A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:

(A) meet the requirements described in paragraph (1)(A) - (C) of this subsection; or

(B) is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

(7) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(8) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

[(3) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.]

[(4) A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:]

[(A) meet the requirements described in paragraph (1)(A) - (C) of this subsection; or]

[(B) is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.]

[(5) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.]

[(6) A physician whose practice includes the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.]

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A physician may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements, except that excess credits may not be applied to requirements set forth under paragraphs (2) and (3) of subsection (a).

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section, subject to the limitations established under paragraph (1) of this subsection.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

[(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.]

[(1) A physician may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements.]

[(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.]

[(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.]

(c) A physician shall be presumed to have complied with this section if in the preceding 36 months the physician becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association Bureau of Osteopathic Specialists (AOA). This provision exempts the physician from all CME requirements, including the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) Maintenance of Certification, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, a [A] physician shall be presumed to have complied with subsection (a)(1) and (4) [(3)] of this section if the physician is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the ABMS or the Osteopathic Continuous Certification (OCC) program requirements set forth by the AOA, and the member board's MOC or OCC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) of this section.

(2) Notwithstanding paragraph (1) of this subsection, a physician's compliance with an MOC program will not be credited toward the requirements set forth under paragraphs (2), (3), and (4) of subsection (a). [This provision does not exempt the physician from the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section.]

(e) A physician may request in writing an exemption for the following reasons:

(1) the physician's catastrophic illness;

(2) the physician's military service of longer than one year's duration outside the state;

(3) the physician's medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the physician, which provides satisfactory evidence to the board that the physician is unable to comply with the requirement for CME.

(f) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(g) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(h) Subsection (a) of this section does not apply to a physician who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(i) This section does not prevent the board from taking board action with respect to a physician or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(j) The board may require written verification of both formal and informal credits from any physician within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(k) Residency or Fellowship Training Completion, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, physicians [~~Physicians~~] in residency/fellowship training or who have completed such training within six months prior to the registration expiration date will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(2) Notwithstanding paragraph (1) of this subsection, completion of training in a residency or fellowship within six months prior to the registration expiration date will not be credited toward requirements set forth under paragraphs (3) and (4) of subsection (a).

(l) CME credits which are obtained during the 30-day [~~30 day~~] grace period after the expiration of the physician's permit to comply with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(m) A false report or false statement to the board by a physician regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A physician who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(n) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(o) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the physician to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 of this title.

(p) A physician, who is a military service member, may request an extension of time, not to exceed two years, to complete any continuing medical education requirements.

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 March 10, 2020.

TRD-202001052
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7016

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.13

The Texas Medical Board (Board) proposes amendments to 22 TAC §172.13, concerning Conceded Eminence.

The amendments to §172.13, relating to Conceded Eminence, add language to clarify the requirements for and process to obtain conceded eminence. Superfluous language is deleted. The rule has also been reorganized and renumbered for clarity.

Subsection (c) lists qualifications the Board shall consider in determining whether an applicant has recognized conceded eminence and authority in the applicant's specialty. Examination requirements have been deleted from subsection (c) and expanded upon in subsection (e).

Subsection (d) lists requirements to be shown in an application for conceded eminence. Consideration for foreign applicants who may not be able to maintain a foreign license or certificate has been made in paragraph (1)(B).

Subsection (e) lists examination requirements. Previously, subsection (c)(3) required that an applicant not have failed a licensing examination within a three-attempt limit. Subsection (e)(2) is now expanded, based on stakeholder input, to accept examinations not only accepted by the board for licensure, but also accepted for licensure in another state, territory, Canadian province, or country, or accepted for specialty board certification.

Subsection (f) lists additional requirements and documentation necessary for a conceded eminence application. Based on stakeholder input, paragraph (3) adds a substantial equivalence analysis for subspecialty training programs that have received ACGME accreditation after the applicant's participation.

Subsections (g) through (l) contain information and requirements listed in the Texas Occupations Code Annotated, §155.006, previously contained in the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to clarify and simplify the process for applicants for conceded eminence. Additionally, facilities will be able to recruit and employ conceded eminence physicians who will provide valuable health care services to the citizens of the state of Texas.

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

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

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does expand, limit, or repeal an existing regulation as described above.

(7) The proposed rule does not increase the number of individuals subject to the rule's applicability.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the amendments are proposed under the authority of the Texas Occupations Code Annotated, §155.006, which provides authority for the Board to recommend and adopt rules related to the issuance of a limited license issued to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

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

§172.13. Conceded Eminence.

(a) Pursuant to the authority of §155.006, Texas Occupations Code, the [~~The~~] board may issue a limited license to an applicant licensed or educated in another state, territory, Canadian province or country who has [~~pursuant to the authority of §155.006, Texas Occupations Code, by virtue of the applicant's~~] conceded eminence and authority in the applicant's specialty.

(b) "Conceded eminence and authority in the applicant's specialty," as used in this section, shall mean that the physician has achieved a high level of academic or professional recognition, domestically or internationally, for excellence in research, teaching, or the practice of medicine within the applicant's specialty. [~~, as evidenced by objective factors, including academic appointments, length of time in a profession, scholarly publications and presentations, professional accomplishments, and awards.~~]

(c) In determining whether an applicant has recognized conceded eminence and authority in the applicant's specialty, the Board shall consider whether: [~~An applicant for a license based on conceded eminence must complete an application showing that the applicant:~~]

(1) the applicant has been the recipient of professional honors and awards, and professional recognition in the international or domestic medical community, for achievements, contributions, or advancements in the field of medicine, or medical research as evidenced by objective factors, including, but not limited to: [~~is recommended to the board by the dean, president, or chief academic officer of:~~]

(A) publications in recognized scientific, medical, or medical research journals, including American peer review journals; [~~a school of medicine in this state accredited by the LCME or AOA;~~]

(B) being the recipient or nominee for international or national awards for distinguished contributions to the advancement of medicine or medical research; [~~The University of Texas Health Center at Tyler;~~]

(C) acknowledgement of expertise from recognized American authorities in the applicant's field of medical specialty; and [~~The University of Texas M.D. Anderson Cancer Center; or~~]

(D) other professional accomplishments as determined meritorious in the discretion of the Board. [~~a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline;~~]

(2) the recommending institution is unable to recruit, after good faith effort, a physician with the same sub-specialty who is: either already licensed in Texas or is eligible for an unrestricted license in

Texas; and [~~is expected to receive an appointment at the institution or program making the recommendation under paragraph (1) of this subsection;~~]

(3) other full licensure options are available to the applicant. [~~has not failed a licensing examination within the three-attempt limit provided by §163.6(b) and §163.6(e)(1) of this title;~~]

~~[(4) has passed the Texas Medical Jurisprudence Examination;]~~

~~[(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;]~~

~~[(6) is of good professional character, as defined by §163.1(a)(8) of this title;]~~

~~[(7) has conceded eminence and authority in a medical specialty identified in the application;]~~

~~[(8) has not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;]~~

~~[(9) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude; and]~~

~~[(10) has read and will abide by board rules and the Medical Practice Act.]~~

(d) An applicant must complete an application and present satisfactory proof to the board that the applicant: [~~Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular).~~]

(1) is a graduate of:

(A) a medical school which is recognized or accredited by the Liaison Committee on Medical Education (LCME) of the Association of American Medical Colleges, Royal College of Physicians in Canada or the American Osteopathic Association (AOA); or

(B) a foreign medical school and

(i) holds a valid foreign medical license or registration certificate issued by the United States or a foreign country on the basis of a foreign examination, and has practiced medicine for at least 10 years, 5 years of which occurred immediately preceding the date applications is made to the Board; or

(ii) held a valid foreign medical license or certificate at the time of coming to the United States and has since continuously worked under a Faculty Temporary License; and

(2) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state accredited by the LCME or AOA;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline; and

(3) is expected to receive an appointment at the institution or program making the recommendation under paragraph (2) of this subsection; and

(4) has demonstrated conceded eminence and authority in a medical specialty identified in the application.

(e) Examination Requirements. An applicant must submit evidence that applicant: [~~The holder of a conceded eminence license shall be limited to the practice of only a specialty of medicine for which the license holder has conceded eminence and authority, as identified in the application. The license holder may only practice medicine within the setting of the institution or program that recommended the license holder under subsection (c)(1) of this section, including a setting that is part of the institution or program by contractual arrangement.~~]

(1) has passed the Texas Medical Jurisprudence Examination; and

(2) has passed an examination that is:

(A) accepted by the board for licensure as defined in §163.6(a) of this title (relating to Examinations Accepted for Licensure), and has not exceeded the number of failed attempts allowed for a licensing exam as provided by §163.6(b) of this title; or

(B) accepted for physician licensure in another state, territory, Canadian province, or country; or

(C) accepted for specialty board certification by:

(i) the American Board of Medical Specialties or

(ii) the American Osteopathic Association.

(f) Additional requirements and documentation for Conceded Eminence License. An applicant: [~~If the holder of a conceded eminence license terminates the relationship with the institution or program that recommended the license holder under subsection (c)(1) of this section, the conceded eminence license shall be considered automatically canceled. To practice medicine in Texas, the license holder must:~~]

(1) must submit 3 letters of recommendation from Texas physicians who are licensed in the same specialty area as the applicant and who shall attest to the candidate's conceded eminence qualifications, character, and ethical behavior; [~~file a new application with the recommendation of a new institution or program, as required by subsection (c)(1) of this section, or~~]

(2) must submit 5 letters from renowned specialists in the applicant's discipline who attest to the applicant's eminence and qualifications; [~~file an application for another Texas medical license or permit.~~]

(3) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (or has completed a substantially equivalent program that has since received ACGME accreditation);

(4) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude;

(5) has not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the appli-

cant's peers in a local, regional, state, or national professional medical association or staff of a hospital;

(6) is of good professional character, as defined by §163.1(a)(8) of this title (relating to Definitions); and

(7) has read and will abide by board rules and the Medical Practice Act.

(g) Supervision. The Board may require an applicant to submit: [~~The holder of a conceded eminence license shall be required to pay the same fees and meet all other procedural requirements for issuance and renewal of the license as a person holding a full Texas medical license.~~]

(1) The name of a licensed physician, in good standing, who will supervise the medical services provided by the applicant for the first 6 months of practice; and

(2) A detailed description of the medical services, duties, and responsibilities that the applicant will perform.

(h) Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular). [~~The holder of a conceded eminence license shall be subject to disciplinary action under the Medical Practice Act and board rules.~~]

(i) The holder of a conceded eminence license shall be limited to the practice of only a specialty of medicine for which the license holder has conceded eminence and authority, as identified in the application. The license holder may only practice medicine within the setting of the institution or program that recommended the license holder under subsection (d)(3) of this section, including a setting that is part of the institution or program by contractual arrangement.

(j) If the holder of a conceded eminence license terminates the relationship with the institution or program that recommended the license holder under subsection (d)(3) of this section, the conceded eminence license shall be considered automatically canceled. To practice medicine in Texas, the license holder must:

(1) file a new application with the recommendation of a new institution or program, as required by subsection (d)(3) of this section, or

(2) file an application for another Texas medical license or permit.

(k) The holder of a conceded eminence license shall be required to pay the same fees and meet all other procedural requirements for issuance and renewal of the license as a person holding a full Texas medical license.

(l) The holder of a conceded eminence license shall be subject to disciplinary action under the Medical Practice Act and board rules.

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

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Scott Freshour
General Counsel
Texas Medical Board
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CHAPTER 178. COMPLAINTS

22 TAC §178.8

The Texas Medical Board (Board) proposes amendments to 22 TAC §178.8, concerning Appeals.

The amendments to §178.8 relating to Appeals, adds language requiring that the board receive a complainant's appeal no later than 90 days after the complainant's receipt of notice of the board's dismissal of the complaint.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to improve the efficiency and efficacy of board resolution of complaints when hearing and deciding an appeal, by better ensuring that the board is able to consider evidence and information generated during a period closer in time to the alleged violation at issue.

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

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

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does expand, limit, or repeal an existing regulation as described above.

(7) The proposed rule does not increase the number of individuals subject to the rule's applicability.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are also proposed under the authority of the Texas Occupations Code annotated, Chapter 154.

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

§178.8. Appeals.

(a) Initiation. Following the receipt of the notice of dismissal of a complaint, the complainant may appeal the dismissal to the board. To be considered by the board, the appeal must:

(1) be in writing; [~~and~~]

(2) list the reason(s) for the appeal, providing sufficient information to indicate that additional review is warranted[~~.~~]; and

(3) must be received by the Board no later than 90 days after the complainant's receipt of notice of the dismissal of the complaint.

(b) Review of an Appeal. Appeals will be considered by a disciplinary committee of the board. Upon review of an appeal, subject to the approval of the board, a disciplinary committee of the board may determine any of the following:

(1) the [~~The~~] investigation should remain closed;

(2) additional [~~Additional~~] information needs to be obtained before a determination on the appeal can be made;

(3) additional [~~Additional~~] information needs to be obtained before a determination can be made as to whether a violation of the Act occurred; or [~~and~~]

(4) the [~~The~~] case should be referred to an ISC for a determination.

(c) Personal Appearances. The complainant has the right to personally appear before a disciplinary committee of the board. This appearance must be scheduled through agency staff. This appearance may be limited in time and scope by the chair of the disciplinary committee of the board [~~that the appeal is before~~].

(d) Notice. The complainant shall be notified of the Board's decision concerning the appeal.

(e) Appeals Limited. Only one appeal shall be allowed for each complaint.

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

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM [AND REHABILITATION ORDERS]

22 TAC §§180.1 - 180.4

The Texas Medical Board (Board) in agreement with the Texas Physician Health Program (TXPHP), proposes amendments to the title of Chapter 180, Texas Physician Health Program and Rehabilitation Orders, and to §180.1, concerning Purpose, §180.2, concerning Definitions, §180.3, concerning Texas Physician Health Program, and §180.4, concerning Operation of Program. The Board also proposes the repeal of §180.7, concerning Rehabilitation Orders.

The amendment to the title of Chapter 180 changes the name to Texas Physician Health Program.

The amendments to §180.1, entitled Purpose, describe the authority for rulemaking and the purpose of the Texas Physician Health Program under Chapter 167 of the Texas Occupations Code.

The amendments to §180.2, entitled Definitions, update existing definitions and add new definitions in order to maintain consistency within this chapter.

The amendments to §180.3, entitled Texas Physician Health Program, clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

The amendments to §180.4, entitled Operation of Program, clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

The repeal of §180.7, entitled Rehabilitation Orders, eliminates outdated rule language that was historically necessary when TXPHP was created in 2009. Historically, this section transferred licensees who were being confidentially monitored by the Board into the newly created Texas Physician Health Program. The Board no longer issues confidential Rehabilitation Orders and therefore this section is no longer necessary.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to ensure that Texas Physician Health Program participants are monitored in a consistent and fair manner, under the authority of Chapter 167 of the Texas Occupations Code.

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

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

there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

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

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

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

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

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

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

(1) The proposed 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. Proposed amendments to §180.4 concerning Operation of Program, would increase the yearly fee for physicians and physician assistants by $200 and decrease the yearly fee by $200 for all other licensees. The purpose of this change is to take into account the disparate earning potential between the many different licensees enrolled in TXPHP as well as to account for inflation in the 10 years since the current fees were promulgated. Section 167.011 of the Texas Occupations Code states that the Medical Board by rule shall set and collect reasonable and necessary fees from program participants in amounts sufficient to offset, to the extent reasonably possible, the cost of administering Chapter 167 of the Texas Occupations Code.

(5) The proposed amended rules do not create a new regulation.

(6) The proposed rules expand, limit, or repeal an existing regulation as described above.

(7) The proposed rules do not increase the number of individuals subject to the rule's applicability.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The amendments are also proposed under the authority of the Texas Occupations Code annotated, Chapter 167.

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

§180.1. Purpose.

[~~Purpose of chapter.~~ ~~The purpose of this chapter is to establish the Texas Physician Health Program for the purpose of encouraging the wellness of program participants pursuant to the Medical Practice Act ("Act"), Texas Occupations Code Annotated §§167.001 - 167.011.~~]

(a) Pursuant to Chapter 167 of the Texas Occupations Code, the Board is authorized to adopt rules relating to the Texas Physician Health Program.

(b) The purpose of the Texas Physician Health Program is to promote the wellness of program participants and to promote the treatment of health conditions that may compromise the ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

§180.2 Definitions.

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

[~~(1) Acupuncture Board--Texas State Board of Acupuncture Examiners.~~]

(1) [~~(2)~~] Agency--the Texas Medical Board, the Texas Board of Acupuncture Examiners, and advisory boards and committees under the authority of the Texas Medical Board, [~~medical board, physician assistant board, and acupuncture board~~] collectively.

(2) Agreement--a contract entered into between a program participant and the Texas Physician Health Program, detailing the terms whereby the program participant shall be monitored by the Texas Physician Health Program. Absent waiver of confidentiality by the program participant or statutory authority for the release of this agreement, the agreement is confidential and shall not be shared beyond the TXPHP.

(3) Committee--TXPHP Advisory Committee, also referred to as the Physician Health and Rehabilitation Advisory Committee under Texas Occupations Code §167.004.

(4) Governing board--the governing board of the program.

(5) License--includes the whole or part of any Agency [~~board~~] permit, certificate, approval, registration or similar form of permission authorized by law.

(6) Medical Board or Board--the Texas Medical Board.

(7) Medical Director [~~director~~] --a physician licensed by the Board [~~board~~] who has expertise in a field of medicine relating to health issues [~~disorders~~] commonly affecting medical practitioners [~~physicians or physician assistants~~], including substance use [~~abuse~~] disorders, and who provides clinical and policy oversight for the Texas Physician Health Program [~~program~~].

(8) PA Board--the Texas Physician Assistant Board.

(9) TXPHP or Program--the Texas Physician Health Program.

(10) Program participant--a practitioner [~~physician, physician assistant, acupuncturist, or surgical assistant~~] who is licensed, has been licensed, or may become licensed by the Agency and has entered into an Agreement with the Texas Physician Health Program [~~or who has applied for licensure and who receives services under the program~~].

§180.3. Texas Physician Health Program.

(a) Governing Board.

(1) Appointments.

(A) The president of the Medical Board in consultation with the presiding chair of the PA Board, and with the advice of stakeholders, shall appoint 11 qualified individuals with good professional character to serve on the Governing Board [~~governing board~~] of the Program [~~program~~].

(B) The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored licensees.

(C) The appointees shall include:

(i) six physicians actively licensed in Texas who are doctors of medicine (M.D.) and have been in practice for at least five years;

(ii) two physicians actively licensed in Texas who are doctors of osteopathic medicine (D.O.) and have been in practice for at least five years;

(iii) one physician assistant who is actively licensed by the PA Board and has been in practice for at least five years;

(iv) one other licensed mental health professional with appropriate experience; and

(v) one member of the public who meets the same requirements as public members of the Medical Board as provided under §152.003 of the Texas Occupations Code.

(D) Appointees shall serve staggered six-year terms and may be reappointed by the Medical Board president after completion of a term.

(E) Appointees may not:

(i) serve on a county medical society committee on physician health and rehabilitation;

(ii) have patient populations that include Program [~~program~~] participants.

(F) An appointee may be removed if:

(i) grounds for removal exist under §152.006 of the Texas Occupations Code;

(ii) the appointee fails to meet the standards of professional conduct under §161.3 of this title (relating to Organization and Structure); or

(iii) the appointee does not otherwise meet the requirements of this chapter.

(G) If there is a vacancy on the Governing Board [~~governing board~~], the Medical Board president in consultation with the presiding chair of the PA Board and with the advice of stakeholders may appoint a new TXPHP Governing Board [~~board~~] member.

(H) The President [~~presiding officer~~] of the Governing Board shall be appointed by the Medical Board president.

(2) Responsibilities of the Governing Board. The Governing Board [~~governing board~~] shall:

(A) provide advice and counsel to the Medical Board; [~~and~~]

(B) establish policy and procedures for the operation and administration of the program; and [~~.~~]

(C) make determinations regarding non-emergent referrals of program participants to the Agency.

(3) Conflicts of Interest. A Governing Board [~~governing board~~] member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the Governing Board [~~governing board~~] member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(b) TXPHP Advisory Committee.

(1) Appointments.

(A) The Governing Board [~~governing board~~] shall appoint six physicians and mental health care providers actively licensed in Texas with at least five years' experience in disorders commonly affecting program participants to the TXPHP Advisory Committee.

(B) Appointees shall serve at the pleasure of the Governing Board and each appointment shall be for a term of six years.

(C) If there is a vacancy on the committee, the Governing Board with the advice of the president of the Medical Board and the presiding officer of the PA Board may appoint a new committee member.

(2) Responsibilities of the Committee. The committee shall provide opinions upon request of the [~~governing board~~] Governing Board or program staff.

(3) Conflicts of Interest.

(A) A committee member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the committee member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(B) A committee member must request to be recused in any decision relating to a program participant that the committee member had treated or is currently treating.

(c) Medical Director Qualifications. The medical director:

(1) serves at the pleasure of the Medical Board;

(2) must be licensed by the Medical Board;

(3) must have expertise in a field of medicine relating to disorders commonly affecting program participants; and

(4) may not treat or supervise a program participant.

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, or the Agency [~~medical board, physician assistant board, or the acupuncture board~~].

(2) The Agency [~~In addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board~~] may publicly or privately refer an applicant or licensee to the

Program [~~program after a contested case hearing or through an agreed order. Unless good cause is found, an applicant or licensee that has been subject to disciplinary action in another state based on alcohol or substance abuse related violations shall be referred to the program through a public referral~~].

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or [~~an alcohol/~~] substance use disorder is eligible to participate in the Program. [~~program. For individuals who have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony, the medical board may publicly refer such individuals through the entry of a disciplinary order that addresses the standard of care, boundary, and/or criminal law related violations.~~]

(c) Drug Testing.

(1) The Program's [~~program's~~] drug testing shall be provided under contract for services with the vendor approved by the Texas Medical Board.

(2) The Program [~~program~~] shall adopt policies and protocols for drug-testing that are consistent with those of the Agency [~~agency in effect on December 31, 2009, or as approved by the Texas Medical Board~~].

(3) The Agency [~~agency~~] may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

(1) If an individual who has been referred by the Agency [~~agency or a third party to the program~~] and does not enter into an agreement for services or a program participant is found to have committed a substantive violation of an Agreement [~~agreement~~], the Governing Board [~~governing board~~] shall report that individual to the Agency [~~agency~~] for possible disciplinary action.

(2) A positive drug screen that is not attributed to a therapeutic prescription by a treating physician, shall be determined to be substantive violation of an Agreement [~~agreement~~] by the program participant.

(3) A committee of the Board shall review the report and may accept the individual or program participant for possible disciplinary action. The Agency[~~direct that an ISC be scheduled to review of the individual's interactions with the program. After consideration of any evidence presented at the ISC, the agency~~] has the option of referring the individual back to the Program. [~~program. The referral of the individual back to the program shall be a public referral through the entry of an agreed order. The agency may pursue other disciplinary action through the agency's disciplinary process in lieu of or in addition to referral back to the program.~~]

(e) Fees.

(1) Program participants shall pay an annual fee of $1,400.00 for physicians and PAs and $1,000.00 for all other licensees [~~$1,200~~]. Half of the annual fee shall be due upon scheduling of the intake interview. This fee is in addition to costs owed by program participants for completion of monitoring [~~medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing~~] associated with a program participant's Agreement. [~~Physician Health Program agreement.~~]

(2) The Program [~~governing board~~] may waive all or part of the annual fee for a program participant upon a showing of good cause. Good cause may include documented financial hardship. All fee waivers shall be reported on at the next scheduled meeting of the Governing Board.

(f) Process.

(1) Interview by Medical Director.

(A) Upon receipt of a referral as described in subsection (a) of this section, the applicant or licensee shall [~~be invited to~~] meet [~~in person~~] with the TXPHP Medical Director [~~medical director~~] or a member of the Advisory Committee [~~advisory committee~~] designated by the Medical Director or Governing Board President [~~medical director~~] for an interview to determine eligibility for the Program [~~PHP~~].

[~~(B) The interview may be conducted by telephone if the individual is out of state or not physically able to meet in person.~~]

(B) [~~(C)~~] An interview may be waived if the Medical Director [~~medical director~~] determines that good cause exists. [~~Advisory committee members are to be given records only in relation to those individuals that they have been assigned to review.~~]

(C) The performance of an intake interview may be delegated to another qualified medical professional as necessary.

(2) Review by Case Advisory Panel.

(A) A case advisory panel shall include three members. These members shall be the President [~~Presiding Officer~~] of the Governing Board, the Secretary of the Governing Board, [~~and~~] another member of the Governing Board who shall serve for a four-month term on a rotating basis with the other members , and one member of the Advisory Board who shall serve for a three-month term on a rotating basis. In the event that the President [~~Presiding Officer~~] and/or the Secretary is unavailable or must recuse themselves, [~~one or two~~] additional members of the Governing Board may [~~shall be asked to~~] serve on the panel.

(B) After an interview [~~by the medical director~~] has occurred, a case advisory panel may be convened at the discretion of the Medical Director[~~,~~] for the purpose of seeking advice and direction [~~from the case advisory panel to advise in cases relating to applicants or program participants~~].

(C) All cases reviewed by a case advisory panel shall be reported on at the next scheduled meeting of the Governing Board.

(3) After the requirements in paragraph (1) of this subsection have been completed, the applicant or licensee shall be offered an agreement, [~~be~~] determined ineligible for the program, or discharged from TXPHP [~~be found to not need the services of the PHP~~].

(4) Agreements are effective upon signature by the program participant.

(5) All agreements are subject to review by the Governing Board.

(g) Evaluations. The TXPHP [~~PHP~~] may request that an applicant or licensee undergo a clinically appropriate evaluation after the person has been interviewed. The evaluation shall be considered a term of an agreement and the person will be considered a program participant at that time. If an individual refuses to undergo an evaluation, he or she may be referred to the Agency on an emergent basis or [~~agency~~] as described in subsection (d).

(h) Agreements. Agreements between program participants and the TXPHP [~~PHP~~] may include, but are not limited to, the following terms and conditions:

(1) abstinence from prohibited substances and drug testing;

(2) agreement not to treat one's own family and friends or receive treatment from family or friends[, ~~except under emergency situations~~];

(3) agreement not to manage one's own medical care;

(4) participation in mutual help [~~self-help~~] groups such as Alcoholics Anonymous;

(5) participation in support groups for recovering professionals;

(6) worksite monitor;

(7) worksite restrictions; and

(8) treatment by an appropriate health care provider.

[~~(i) Interventions. Upon receipt of credible information, the medical director may investigate and, if indicated, initiate, or otherwise facilitate, an intervention for the purpose of assisting an individual in obtaining treatment for a mental or physical condition or substance use problem. All information obtained as a part of the intervention process shall be considered confidential.~~]

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

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Scott Freshour
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22 TAC §180.7

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §153.001, Texas Occupations Code.

Sections 167.001 - 167.011, Texas Occupations Code, are affected by this proposal.

§180.7. Rehabilitation Orders.

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

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Scott Freshour
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Texas Medical Board
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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.1, §195.4

The Texas Medical Board (Board) proposes amendments to 22 TAC §195.1, concerning Definitions, and §195.4, concerning Operation of Pain Management Clinics.

Section 195.1, relating to Definitions, is amended to add a new definition for "personnel", distinguishing personnel from physicians.

Section 195.4, relating to Operation of Pain Management Clinics, is amended to add language distinguishing personnel from physicians who may be employed or contracted to provide medical services at a pain clinic.

The amendments are necessitated by House Bill 2454 (86th Legislature, R.S.), which sets for the new continuing education requirements in the topic of opioid prescribing and provides that the new hours may not be credited toward hours required under board rule for pain clinic personnel. The amendments are intended to clarify that a physician's completion of the additional education hours will be credited toward the rules requiring additional education for physicians employed or contracted to provide medical services in a pain clinic found under Chapter 195, in conformance with legislative intent.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to provide clarity to physicians employed or contracted to provide medical services at a pain clinic about how to comply with new continuing education requirements related to prescribing opioids and other controlled substances for the treatment of chronic pain.

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

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

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

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

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase the number of individuals subject to the rule's applicability.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are further proposed under the authority of House Bills 2059, 2174, 2454, and 3285 (86th Texas Legislature, R.S.).

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

§195.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) Board--The Texas Medical Board.

(2) Pain management clinic--A publicly or privately owned facility for which a majority of patients are issued, on a monthly basis, a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.

(3) Personnel--Staff employed or individuals contracted to provide services at a pain clinic. The term does not include physicians.

(4) [~~(3)~~] Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(5) [~~(4)~~] Operator--An owner, medical director, or physician affiliated or associated with the pain management clinic in any capacity. Each of these individuals is considered to be operating at the pain management clinic.

§195.4. Operation of Pain Management Clinics.

(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians who own pain management clinics and to provide the minimum acceptable standards for such clinics.

(b) Exemptions. The rules promulgated under this title do not apply to the following settings:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a hospice established under 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 CFR §418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United States;

(6) a nonprofit health organization certified by the board under Chapter 177 of this title (relating to Certification of Non-Profit Health Organizations);

(7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or

(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and who personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.

(c) Ownership. A pain management clinic may not operate in Texas unless the clinic is owned and operated by a medical director who is a physician who practices in Texas, [~~and~~] has an unrestricted medical license, and holds [~~hold~~] a certificate as described in §195.2 of this title (relating to Certification of Pain Management Clinics). A clinic may be owned by more than one physician licensed in Texas, but a non-physician may not hold any ownership interest.

(d) Operation of Clinic. The medical director of a pain management clinic must operate the clinic in compliance with Drug Prevention and Control Act, 21 U.S.C.A. 801 et. seq. and the Texas Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code, relating to the prescribing and dispensing of controlled substances.

(e) Personnel and Physician Requirements. The medical director of a pain management clinic must, on an annual basis, ensure that all personnel are properly licensed, if applicable, and that all personnel and physicians complete at a minimum [~~trained to include~~] 10 hours of continuing medical education [~~(CME)~~] related to pain management, and qualified [~~for employment~~] consistent with §195.2(b)(1) of this title.

(f) Standards to Ensure Quality of Patient Care. The medical director of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours;

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic;

(3) establish protocols consistent with Chapter 170 of this title (relating to Pain Management); and

(4) establish quality assurance procedures to include at a minimum:

(A) a practice quality plan that requires the medical director to complete as part of the 48 credits of CME completed every 24 months as a prerequisite for registration of the physician's permit, at least 10 hours of CME in the area of pain management from formal courses that are:

(i) designated for AMA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education; or

(ii) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(B) documentation of the background, training, and certifications for all clinical staff;

(C) a written drug screening policy and compliance plan for patients receiving chronic opioids; and

(D) performance of periodic quality measures of medical and procedural outcomes and complications that may include questionnaires or surveys for activities of daily living scores, pain scores, and standardized scales.

(g) Patient Billing Procedures.

(1) The medical director of a pain management clinic must ensure that adequate billing records are maintained for all patients and made available to the board, upon request. Billing records shall include the amount paid, method of payment, and description of services.

(2) Billing records shall be maintained for seven years from the date of last treatment of the patient.

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 March 10, 2020.

TRD-202001055
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7016

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.51

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.51, concerning Preamble and General Principles.

Background, Justification and Summary

The amendment to §501.51 relocates a portion of the definition of the practice of public accountancy so that the complete definition may be found in one location.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide a better and more accessible understanding of the practice of public accountancy.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.51. Preamble and General Principles.

(a) These rules of professional conduct were promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to ensure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

(b) The services usually and customarily performed by those in the public, industry, or government practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations to their clients, employers and to the public in general. These obligations include maintaining independence in fact and in appearance, while in the client practice of public accountancy, continuously improving professional skills, observing GAAP and GAAS, when required, promoting sound and informative financial reporting, holding the affairs of clients and employers in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters.

(c) The board has an underlying duty to the public to ensure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright minds essential to adequately serving the public interest.

(d) These rules recognize the First Amendment rights of the general public as well as licensees and do not restrict the availability of accounting services. However, public accountancy, like other professional services, cannot be commercially exploited without the public being harmed. While information as to the availability of accounting services and qualifications of licensees is desirable, such information should not be transmitted to the public in a misleading fashion.

(e) The rules are intended to have application to all kinds of professional services performed in the practice of public accountancy, including services found at §501.52(22) of this chapter (relating to Definitions). [~~relating to:~~]

[~~(1) accounting, auditing and other assurance services,~~]

[~~(2) taxation,~~]

[~~(3) financial advisory services,~~]

[~~(4) litigation support,~~]

[~~(5) internal auditing,~~]

[~~(6) forensic accounting, and~~]

[~~(7) management advice and consultation.~~]

(f) Finally, these rules also recognize the duty of certified public accountants to refrain from committing acts discreditable to the profession. These acts, whether or not related to the accountant's practice, impact negatively upon the public's trust in the profession.

(g) In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

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 March 13, 2020.

TRD-202001110
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52, concerning Definitions.

Background, Justification and Summary

The amendment to §501.52 corrects three typographical errors in the current rule and locates the complete definition of the practice of public accountancy in the definition of professional accounting services.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide greater accessibility and clarity to the definition of the practice of public accountancy.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review or compilation required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services;

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party;

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or

the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on [~~or~~] Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity engaged in the practice of public accountancy;

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements, Peer Review, and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing;

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act (relating to Practice by Certain Out-of-State Firms and Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications);

(16) "Peer Review," [~~review",~~] "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section;

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) of this title (relating to Practice by Certain Out of State Firms) is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of this title (relating to Practice by Certain Out of State Firms and Individuals);

(21) "Preparation engagement" means the preparation of financial statements that do not include an audit, review or a compilation report on those financial statements in accordance with Standards for Accounting and Review Services adopted by the AICPA;

(22) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including but not limited to:

(A) issuing reports on financial statement(s);

(B) preparation engagements pursuant to SSARS;

(C) providing management or financial advisory or consulting services;

(D) preparing tax returns;

(E) providing advice in tax matters;

(F) providing forensic accounting services; [~~and~~]

(G) providing internal auditing services; [~~.~~]

(H) accounting, auditing and other assurance services;

(I) providing litigation support services; and

(J) recommending the sale of a product if the recommendation requires or implies accounting or auditing skills.

(23) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself.

(24) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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 March 13, 2020.

TRD-202001111
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.73

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.73, concerning Integrity and Objectivity.

Background, Justification and Summary

The amendment to §501.73 requires the disclosure in writing of a relationship with another person, entity, product, or service that the licensee is offering to his client that could be viewed as a conflict of interest.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will require clarity of evidence of the disclosure in writing of a relationship with another person, entity, product, or service that the licensee is offering to his client that could be viewed as a conflict of interest.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.73. Integrity and Objectivity.

(a) A person in the performance of professional accounting services or professional accounting work shall maintain integrity and objectivity, shall be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a person may resolve doubt in favor of his client as long as any tax position taken complies with applicable standards such as those set forth in Circular 230 issued by the IRS and the AICPA's SSTSs.

(b) A conflict of interest may occur if a person performs a professional accounting service or professional accounting work for a client or employer and the person has a relationship with another person, entity, product, or service that could, in the person's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the person's objectivity. If the person believes that the professional accounting service or professional accounting work can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties in writing, then this rule shall not operate to prohibit the performance of the professional accounting service or professional accounting work because of a conflict of interest.

(c) Certain professional engagements, such as audits, reviews, and other services, require independence. Independence impairments under §501.70 of this chapter (relating to Independence), its interpretations and rulings cannot be eliminated by disclosure and consent.

(d) A person shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs independence or objectivity in rendering professional accounting services or professional accounting work, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

(e) Interpretive comment: An email communication will satisfy the requirement for written disclosure of a conflict of interest in subsection (b) 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 March 13, 2020.

TRD-202001112
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

Background, Justification and Summary

The amendment to §501.75 updates the citation of the Texas Securities Act.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide the public with a better citation to the Texas Securities Act.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.75. Confidential Client Communications.

(a) Except by permission of the client or the authorized representatives of the client, a person or any partner, member, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. The following includes, but is not limited to, examples of authorized representatives:

(1) the authorized representative of a successor entity becomes the authorized representative of the predecessor entity when the predecessor entity ceases to exist and no one exists to give permission on behalf of the predecessor entity; and

(2) an executor/administrator of the estate of a deceased client possessing an order signed by a judge is an authorized representative of the estate.

(b) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement and identified in Chapter 501, Subchapter B of this title (relating to Professional Standards);

(2) by applicable federal laws, federal government regulations, including requirements of the PCAOB;

(3) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, a summons under the provisions of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or a summons

under the provisions of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), Texas Revised Civil Statutes Annotated;

(4) under a court order signed by a judge if the court order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client.

(5) by the public accounting profession in reporting on the examination of financial statements;

(6) by a congressional or grand jury subpoena;

(7) in investigations or proceedings conducted by the board;

(8) in ethical investigations conducted by a private professional organization of certified public accountants;

(9) in a peer review; or

(10) in the course of a practice review by another CPA or CPA firm for a potential acquisition in conjunction with a prospective purchase, sale, or merger of all or part of a member's practice if both firms enter into a written nondisclosure agreement with regard to all client information shared between the firms.

(c) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information already made public, including information disclosed to others not having a confidential communications relationship with the client or authorized representative of the client.

(d) A person in the client practice of public accountancy shall take all reasonable measures to maintain the confidentiality of the client records and shall immediately upon becoming aware of the loss of, or loss of control over, the confidentiality of those records notify the client affected in writing of the date and time of the loss if known. Loss includes a cybersecurity breach or other incident exposing the records to a third party or parties without the client's consent or the loss of the client records or the loss of control over the client records. Persons have a responsibility to maintain a back-up system in order to be able to immediately identify and notify clients of a loss.

(e) Interpretive comment. The definition of a successor entity as referenced in subsection (a)(1) of this section does not include the purchaser of all assets of an entity.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §501.76

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.76, concerning Records and Work Papers.

Background, Justification and Summary

The amendment to §501.76 removes a parenthetical to correctly reflect the intent of the sentence.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide greater clarity to the rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the pro-

posed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.76. Records and Work Papers.

(a) Records.

(1) A person shall return original client records to a client or former client within a reasonable time (promptly, not to exceed 10 business days) after the client or former client has made a request for those records. Original client records are those records provided to the person by the client or former client in order for the person to provide professional accounting services to the client or former client. Original client records also include those documents obtained by the person on behalf of the client or former client in order for the person to provide professional accounting services to the client or former client and do not include the electronic and hard copies of internal work papers. The person shall provide these records to the client or former client, regardless of the status of the client's or former client's account and cannot charge a fee to provide such records. Such records shall be returned to the client or former client in the same format, to the extent possible, that they were provided to the person by the client or former client. The person may make copies of such records and retain those copies.

(2) Unless the person and the client have agreed in writing to the contrary:

(A) A person's work papers, to the extent that such work papers include records which would ordinarily constitute part of the client's or former client's books and records and are not otherwise available to the client or former client, shall also be furnished to the client within a reasonable time (promptly, not to exceed 20 business days) after the client has made a request for those records. The person can charge a reasonable fee for providing such work papers.

(B) Such work papers shall be in a format that the client or former client can reasonably expect to use for the purpose of accessing such work papers. The person is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. However, if the client requests records in a specific format, and the records are available in such format within the person's custody and control, the client's request shall be honored.

(C) The person is not required to provide the client with proprietary formulas.

(D) The person is not required to provide the client with other formulas [~~{~~]unless the formulas support the client's accounting or other records[~~}~~] or the person was engaged to provide such formulas as part of a completed work product.

(3) Work papers which constitute client records include, but are not limited to:

(A) documents in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(B) documents in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;

(C) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry; and

(D) consolidating or combining journal entries and documents and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(b) Work papers. Work papers, regardless of format, are those documents developed by the person incident to the performance of his engagement which do not constitute records that must be returned to the client in accordance with subsection (a) of this section. Work papers developed by a person during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the person for a client, shall be and remain the property of the person who developed the work papers.

(c) For a reasonable charge, a person shall furnish to his client or former client, upon request from his client made within a reasonable time after original issuance of the document in question:

(1) a copy of the client's tax return; or

(2) a copy of any report or other document previously issued by the person to or for such client or former client provided that furnishing such reports to or for a client or former client would not cause the person to be in violation of the portions of §501.60 of this chapter (relating to Auditing Standards) concerning subsequent events.

(d) This rule imposes no obligation on the person who provides services to a business entity to provide documents to anyone involved with the entity except the authorized representative of the entity.

(e) Documentation or work documents required by professional standards for attest services shall be maintained in paper or electronic format by a person for a period of not less than five years from the date of any report issued in connection with the attest service, unless otherwise required by another regulatory body. Failure to maintain such documentation or work papers constitutes a violation of this section and may be deemed an admission that they do not comply with professional standards.

(f) Interpretive Comment: It is recommended that a person obtain a receipt or other written documentation of the delivery of records to a client.

(g) Interpretive Comment: For the purposes of this rule, client records include:

(1) backup or working files of commercially available software along with any passwords needed to access such files; or

(2) client files from commercially available tax return preparation software including any passwords needed to access such files.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §501.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.77, concerning Acting through Others.

Background, Justification and Summary

The amendment to §501.77 makes a grammatical change to the rule.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide grammatical clarity to the rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.77. Acting through Others.

(a) A person shall not permit others including non-CPA owners and employees, to carry out on his behalf, either with or without compensation, acts, which, if carried out by the person, would place him in violation of these rules of professional conduct.

(b) The board shall consider that the conduct of any non-CPA owner or employee in connection with the business of a licensed firm <u>as</u> [~~is~~] the conduct of that licensed firm for the purposes of the rules of professional conduct.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §501.78

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.78, concerning Withdrawal or Resignation.

Background, Justification and Summary

The amendment to §501.78 requires the withdrawal from an engagement or resignation from an employment to be in writing and updates a rule citation resulting from a prior rule revision.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide the public and the board with evidence of clarity of a licensee's withdrawal from an engagement or resignation of employment.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.78. Withdrawal or Resignation.

(a) If a person cannot complete an engagement to provide professional accounting services and professional accounting work or employment assignment in a manner that complies with the requirements of this chapter, the person shall withdraw from the engagement or resign from the employment assignment.

(b) If a person withdraws from an engagement or resigns from an employment assignment pursuant to this section, the person shall inform the client or employer of the withdrawal or resignation.

(c) Interpretive Comment: Any withdrawal or resignation shall [~~preferably~~] be in writing. A person shall comply with the requirements of §501.75 of this chapter (relating to Confidential Client Communications) and §501.90(17) [~~§501.90(16)~~] of this chapter (relating to Discreditable Acts) regarding confidential information of clients and employers during and after a withdrawal or resignation executed pursuant to this section. For purposes of this section, an engagement commences once an engagement letter is signed by the client, time is charged to the engagement, or compensation is received by a person in connection with an engagement or employment assignment.

(d) Interpretive comment: An email communication will satisfy the requirement for written disclosure of a withdrawal or resignation in subsection (c) of this section.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.80, concerning Practice of Public Accountancy.

Background, Justification and Summary

The amendment to §501.80 references relevant sections of the Texas Public Accountancy Act to the rule.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide greater clarity of the rule's intent.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.80. Practice of Public Accountancy.

(a) A person may not engage in the practice of public accountancy unless he holds a valid license or qualifies under a practice privilege. A person may not use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a CPA unless he holds a valid license issued by the board or qualifies under a practice privilege. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a CPA or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

(c) Interpretive Comment: This section incorporates the definitions of the practice of public accountancy and professional services and accounting work found in §501.52(8) and (22) of this chapter (relating to Definitions) as well as §901.003 of the Act (relating to Practice of Public Accountancy).

(d) Interpretive Comment: This section incorporates §§901.451 - 901.453 of the Act (relating to the Use of Title or Abbreviation for "Certified Public Accountant;" Use of Title or Abbreviation for "Public Accountant;" and Use of Other Titles or Abbreviations).

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81, concerning Firm License Requirements.

Background, Justification and Summary

The amendment to §501.81 reflects a revision to the Public Accountancy Act to eliminate firm licensure in Texas by out of state firms providing attest services so long as the out of state firm does not establish a physical office in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to provide greater interstate mobility of the practice of public accountancy.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.81. Firm Licensing [~~License Requirements~~].

(a) A firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege. A firm license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued. A firm license does not expire when the application for license renewal is received by the board prior to its expiration date. An expiration date for a firm license may be extended by the board, in its sole discretion, upon a demonstration of extenuating circumstances that prevented the firm from timely applying for or renewing a firm license.

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

[~~(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:~~]

[~~(1) a financial statement audit or other engagement that is to be performed in accordance with SAS;~~]

[~~(2) an examination of prospective financial information that is to be performed in accordance with SSAE; or~~]

[~~(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.~~]

(c) [~~(d)~~] Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio

format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(d) [~~(e)~~] The requirements of subsection (c) [~~(d)~~] of this section do not apply with regard to a person performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law;

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department; or

(3) pursuant to a practice privilege.

(e) [~~(f)~~] On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (c) [~~(d)~~] of this section, the person's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(f) [~~(g)~~] Interpretive Comment: A person who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.52(8) and (22) of this chapter (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (c) [~~(d)~~] 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 March 13, 2020.

TRD-202001118
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82, concerning Advertising.

Background, Justification and Summary

The amendment to §501.82 clarifies the definition of coercion to include not only force but the threat of force.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will clarify what constitutes coercion.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.82. Advertising.

(a) A person shall not use or participate in the use of:

(1) any communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim;

(2) any communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct; nor

(3) a name that is misleading as to the identity of the individual practicing under such name.

(b) Definitions:

(1) A "false, fraudulent, misleading or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contain a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional accounting services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional accounting services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants; or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, e-mail system or any other electronic means.

(3) Coercion--Compelling by force or threat of force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion--Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication--Either a face-to-face meeting or a conversation by telephone.

(6) Duress--Any conduct which overpowers the will of another.

(7) Harassing--Any word, gesture, or action which tends to alarm and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) In the case of an electronic or direct mail communication, the person shall retain a copy of the actual communication along with a list or other description of parties to whom the communication was distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its last distribution.

(e) Subsection (d) of this section does not apply to anyone when:

(1) the communication is made to anyone who is at that time a client of the person;

(2) the communication is invited by anyone to whom it was made; or

(3) the communication is made to anyone seeking to secure the performance of professional accounting services.

(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

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 March 13, 2020.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.83, concerning Firm Names.

Background, Justification and Summary

The amendment to §501.83 helps to clarify that the rule pertains to licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will clarify the scope of the rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.83. Firm Names.

(a) General rules applicable to all firms:

(1) A firm name may not contain words, abbreviations or other language that are misleading to the public, or that may cause confusion to the public as to the legal form or ownership of the firm.

(2) A firm licensed by the board may not conduct business, perform or offer to perform services for or provide products to a client under a name other than the name in which the firm is licensed.

(3) A word, abbreviation or other language is presumed to be misleading if it:

(A) is a trade name or assumed name that does not comply with paragraph (4)(A) or (B) of this subsection;

(B) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;

(C) includes the name of a non-owner of the firm;

(D) includes the name of a non-CPA, except as provided in paragraph (4)(B) of this subsection;

(E) states or implies educational or professional attainment not supported in fact;

(F) states or implies licensing recognition for the firm or any of its owners not supported in fact;

(G) includes a designation such as "and company," "associates," "and associates," "group" or abbreviations thereof or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice. Independent contractors are not considered employees under this subsection; or

(H) includes the designation "company" when it is a one licensee sole proprietorship.

(4) A word, abbreviation or other language is presumed not misleading if it:

(A) is the licensee's full name, the licensee's surname, or full or last initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;

(B) is the name, surname, or initials of one or more current or former foreign practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state pursuant to §901.355 of the Act (relating to Registration for Certain Foreign Applicants);

(C) indicates the legal organization of the firm; or

(D) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.

(5) The board may place conditions on the licensing of a firm in order to ensure compliance with the provisions of this section.

(b) Additional Requirements Based on Legal Form or Ownership.

(1) The names of a corporation, professional corporation, limited liability partnership, professional limited liability company or other similar legal forms of ownership must contain the form of ownership or an abbreviation thereof, such as "Inc.," "P.C.," "L.L.P." or "P.L.L.C."; except that a limited liability partnership organized before September 1, 1993 is not required to utilize the words "limited liability partnership" or any abbreviation thereof.

(2) Sole Proprietorships:

(A) The name of a firm that is a sole proprietor must contain the surname of the sole proprietor as it appears on the individual license issued to the sole proprietor by the board.

(B) A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor, notwithstanding subsection (d) of this section.

(c) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof, unless specifically permitted by the board.

(d) A firm licensed by the board is required to report to the board any change in the legal organization of the firm and amend the firm name to comply with this section regarding firm names for the new organization within thirty days of the effective date of such change.

(e) This section regarding firm names does not affect firms licensed by the board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section. Nothing in this subsection prohibits the board from placing conditions on the licensing of a firm pursuant to subsection (a)(5) of this section at the time of renewal of the firm license.

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

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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22 TAC §501.85

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.85, concerning Complaint Notice.

Background, Justification and Summary

The amendment to §501.85 eliminates the agency's physical address for receipt of complaints against licensees in favor of the agency's electronic address.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide greater access for the public and interested parties to file complaints.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state

will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.85. Complaint Notice.

When a person receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a person shall provide to the complainant a statement that: Complaints concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at the board's address as it appears on its website at www.tsbpa.texas.gov or enforcement@tsbpa.texas.gov [~~333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7866, e-mail to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854~~].

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 March 13, 2020.

TRD-202001121

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: April 26, 2020

For further information, please call: (512) 305-7842

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SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

Background, Justification and Summary

The amendment to §501.90 redrafts what constitutes a discreditable act to more accurately reflect the language of the Public Accountancy Act and corrects typographical errors in the titles of board rule §519.7 and §525.1.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide the public with greater clarity of what constitutes a discreditable act.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. Discreditable Acts.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to and the board may discipline a person for the following:

(1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee [~~cancellation, revocation, suspension or refusal to renew authority to practice as a CPA or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state~~];

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) a final finding of conduct by state or federal courts of competent jurisdiction, agencies, boards, local governments or commissions for violations of state or federal laws or rules or findings of unethical conduct by licensees that engage in activities regulated by entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas State Treasurer, Texas Securities Board, Texas Department of Insurance, and the Texas Secretary of State;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) failure to comply with a final order of any state or federal court;

(12) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(17) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge;

(ii) a summons under the provisions of:

(I) the Internal Revenue Code of 1986 and its subsequent amendments;

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(iii) a congressional or grand jury subpoena; or

(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of CPAs;

(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(18) breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License [~~Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board~~]) and §525.1 of this title (relating to Applications for the UCPAE, Issuance of the CPA Certificate, or Initial License [~~Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License~~]) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

(20) Interpretive comment: A conviction or final finding of unethical conduct by a competent authority, for the purpose of paragraph (8) of this subsection, includes any right to practice before the authority or findings that limit the scope of the permit or license conveyed by the authority. Conviction relates to the finding in a criminal

proceeding and final finding relates to a determination in a non-criminal proceeding. Unethical conduct or activities are determined by the governmental entity making the determination of a conviction or final finding.

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 March 13, 2020.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

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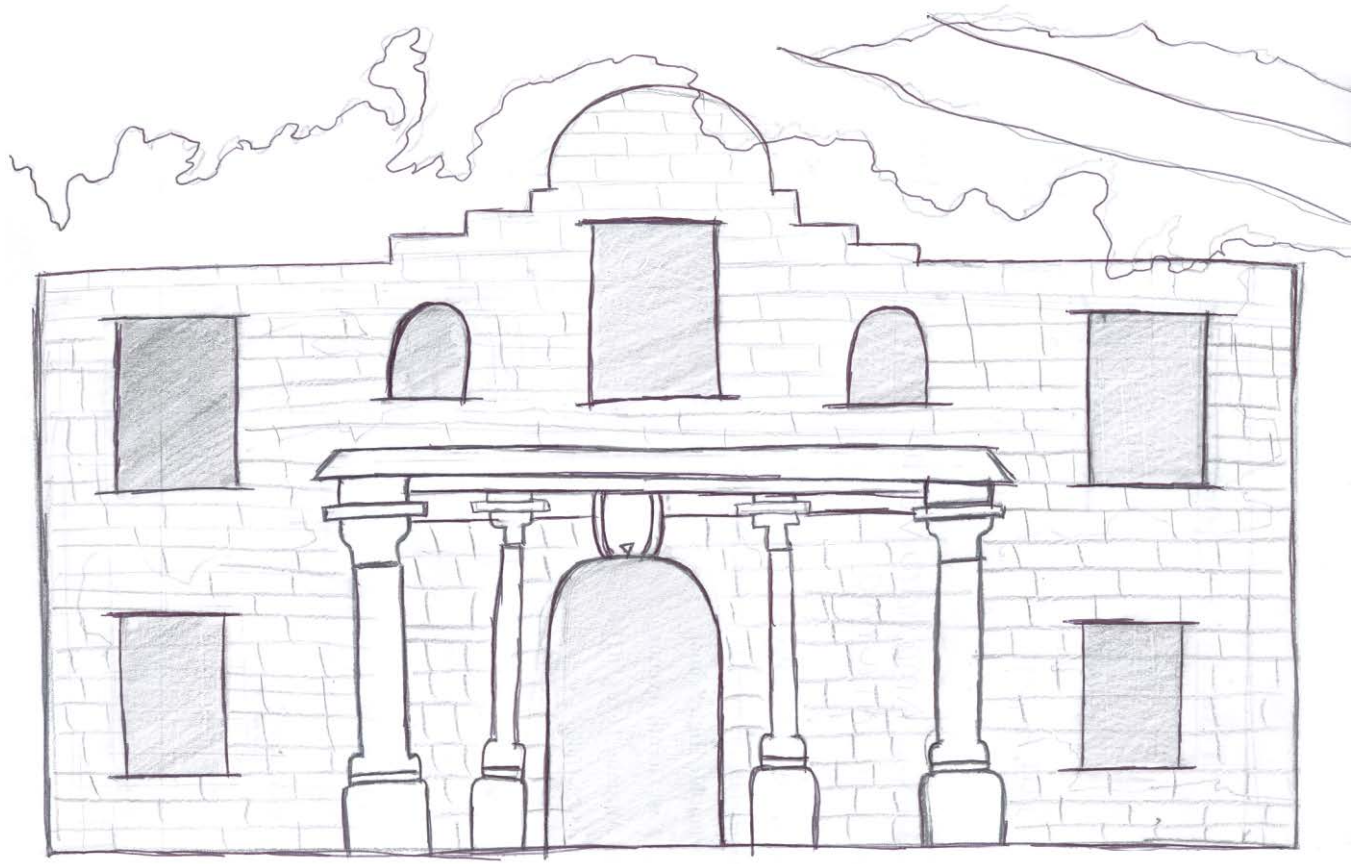

ADOPTED RULES

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 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §12.86

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §12.86, regarding Motions for Continuance, of Chapter 12, Subchapter D, of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8125). The rule will not be republished.

On occasion, a respondent to a sworn complaint requests a postponement of a preliminary review hearing, in some cases within a week or less before the hearing. In fairness to all parties involved, a clear rule regarding such requests will provide direction as to when such requests must be made and how they will be addressed. The new rule uses similar criteria as the Commission's rule §12.155 for formal hearings, except that a motion must be filed at least 21 days before the hearing (instead of 5 days before) and a response must be filed at least 7 business days before the hearing (instead of within three days after). A motion must also include the specific reasons for the motion and the dates of any previous motions for continuance filed. The presiding officer of the Commission would rule on the motion. If a motion is received late, there must be good cause with supporting evidence for the motion to be considered.

No public comments were received on this new rule.

The new rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code, and Texas Government Code Section 571.1244, which requires the Commission to adopt procedures for the conduct of preliminary review hearings.

The new rule affects Subchapter E of Chapter 571 of the Government Code.

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

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TRD-202001056

Anne Temple Peters
Executive Director
Texas Ethics Commission
Effective date: March 30, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 463-5800

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SUBCHAPTER E. FORMAL HEARING

DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §12.174

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §12.174, regarding Summary Disposition, of Chapter 12, Subchapter E, Division 7, of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8126). The rule will be republished.

The new rule states that the Commission shall grant summary disposition on an allegation if a motion is made and the evidence shows that there is no genuine issue as to any material fact and the movant is entitled to a decision in its favor as a matter of law on the issues set out in the motion. The motion must be filed at least 45 days before a hearing on the merits and a response is due within 15 days. The new rule is similar to rule 155.505 of the State Office of Administrative Hearings ("SOAH").

No public comments were received on this new rule.

The new rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code, and Texas Government Code Section 571.131(c), which requires the Commission to adopt rules governing hearings.

The new rule affects Subchapter E of Chapter 571 of the Government Code.

§12.174. Summary Disposition.

(a) Granting of summary disposition. Summary disposition shall be granted on all or part of a complaint's allegations if the allegations, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at the formal hearing.

(b) Deadlines. Unless otherwise ordered by the presiding officer:

(1) A party may file a motion for summary disposition at any time after the commission orders a formal hearing, but the motion must be filed at least 45 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) Contents of Motion. A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the commission to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits."

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the presiding officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

(1) The presiding officer may order a hearing on a motion for summary disposition and the commission may rule on the motion without a hearing.

(2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a violation by a preponderance of the evidence.

(3) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the presiding officer or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The commission shall issue a final decision and written report, including a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(4) If summary disposition is granted on some but not all of the contested issues in a case, the commission shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The commission shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the commission shall include in the final decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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Proposal publication date: December 27, 2019
For further information, please call: (512) 463-5800

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.9 - 18.11

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §18.9, regarding Corrected/Amended Reports, and new Texas Ethics Commission Rules §18.10, regarding Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report, and §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report, of Chapter 18, of Title 1, Part 2, of the Texas Administrative Code. Amended §18.9 is adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8127). Amended §18.9 will be republished. New §18.10 and §18.11 are adopted without changes to the proposed text as published in the same issue of the *Texas Register* (44 TexReg 8127). New §18.10 and §18.11 will not be republished.

The new and amended rules authorize the Executive Director to apply the guidelines approved by the Commission in 2014 to resolve waiver requests administratively, but appeals would be presented to the Commission on a case-by-case basis. These rules only address corrections/amendments to eight-day pre-election reports.

No public comments were received on these new and amended rules.

The new and amended rules are adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code, and Title 15 of the Election Code.

The new and amended rules affect Title 15 of the Election Code.

§18.9. Corrected/Amended Reports.

(a) A filer may correct/amend a report filed with the commission or a local filing authority at any time.

(b) A corrected/amended report must clearly identify how the corrected/amended report is different from the report being corrected/amended.

(c) A filer who files a corrected/amended report must submit an affidavit identifying the information that was corrected/amended.

(d) A corrected/amended report filed with the commission after the original report is due is subject to a late fine as provided by §18.13 of this title (relating to Fine for a Late Report).

(e) Subsection (d) of this section does not apply to:

(1) a lobby registration or report, other than an activities report, that is corrected/amended not later than the 14th business day after the date the filer became aware of the errors or omissions in the original registration or report;

(2) a semiannual report that is corrected/amended before the eighth day after the original report was filed;

(3) a semiannual report that is corrected/amended on or after the eighth day after the original report was filed if:

(A) the correction/amendment is made before a sworn complaint is filed with regard to the subject of the correction/amendment; and

(B) the original report was made in good faith and without an intent to mislead or misrepresent the information contained in the report;

(4) an 8-day pre-election report that is corrected/amended in accordance with §18.10 of this title (relating to Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report);

(5) a report other than an 8-day pre-election report that is corrected/amended not later than the 14th business day after the date the filer learns the report as originally filed is inaccurate or incomplete if:

(A) the errors or omissions were made in good faith; and

(B) the filer files an affidavit stating that the errors or omissions in the original report were made in good faith.

(f) In this section, "8-day pre-election report" has the same meaning assigned by §18.10(c) of this title.

(g) Except as provided by subsections (b) and (c) of this section, this section does not apply to a civil penalty assessed through the sworn complaint or facial compliance review process.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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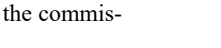
For further information, please call: (512) 463-5800



CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §20.1, regarding Definitions, of Chapter 20, Subchapter A, of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8129). The rule will not be republished.

HB 2586 from the 86th Texas Legislature codifies, with slight variations, several definitions established by Commission rule. This renders the definitions unnecessary and, where in variance with a statutory definition, in conflict. The rulemaking repeals those definitions.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule affects Title 15 of the Election Code.

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

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Anne Temple Peters
Executive Director
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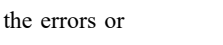

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.5

The Texas Ethics Commission (the Commission) adopts the repeal of Texas Ethics Commission Rules §22.5, regarding Contributions to Direct Campaign Expenditure Only Committees, of Chapter 22 of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8132). The rule will not be republished.

HB 2586 from the 86th Texas Legislature codifies, with variations, Commission Rules §22.5, related to the affidavit required for direct campaign expenditure only committees, rendering the rule unnecessary. The rulemaking repeals those definitions.

No public comments were received on this amended rule.

The repeal is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The repeal affects Title 15 of the Election Code.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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1 TAC §22.6

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §22.6, regarding Reporting Direct Campaign Expenditures, of Chapter 22 of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8133). The rule will be republished.

HB 2586 from the 86th Texas Legislature codifies, defines activities that do not constitute "acting in concert," which conflicts with Commission Rules §22.6, defining the term "acting in concert" for certain purposes. The rulemaking repeals that definition.

No public comments were received on this amended rule.

The amendment is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amendment affects Title 15 of the Election Code.

§22.6. Reporting Direct Campaign Expenditures.

Section 254.261 of the Election Code applies to a person who, not acting in concert with another person, makes one or more direct campaign expenditures that exceed $130 in an election from the person's own property.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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1 TAC §22.33

The Texas Ethics Commission (the Commission) adopts the repeal of Texas Ethics Commission Rules §22.33, regarding Expenditure Limits of the Judicial Campaign Fairness Act, of Chapter 22, of Title 1, Part 2, of the Texas Administrative Code. The amendment is adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8133). The rule will not be republished.

The JCFA previously imposed expenditure limits on judicial candidates and officeholders, located in Chapter 253 of the Election Code. The law required a judicial candidate to file a declaration stating whether the candidate intended to comply with those limits. Rule 22.33 was adopted to clarify when a declaration was required and how long it remained effective. However, the 2019 legislature passed House Bill 3233, which repealed the expenditure limits. Therefore, the rule is obsolete and must be repealed.

No public comments were received on this new rule.

The repeal is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The repeal affects Title 15 of the Election Code.

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

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Anne Temple Peters
Executive Director
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CHAPTER 27. JUDICIAL CAMPAIGN FAIRNESS ACT

The Texas Ethics Commission (the Commission) adopts the repeal of Texas Ethics Commission Rules §27.1, regarding Applicability, of Chapter 27, Subchapter A of Title 1, Part 2, of the Texas Administrative Code; and §27.101, regarding When a Declaration of Compliance or Declaration of Intent is Required, of Chapter 27, Subchapter C, of Title 1, Part 2, of the Texas Administrative Code. The repeals are adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8134). The rules will not be republished.

The JCFA previously imposed expenditure limits on judicial candidates and officeholders, located in Chapter 253 of the Election Code. The law required a judicial candidate to file a declaration stating whether the candidate intended to comply with those limits. Rules 27.1 and 27.101 were adopted to clarify when a declaration was required and how long it remained effective. However, the 2019 legislature passed House Bill 3233, which repealed the expenditure limits and the requirement to file the declaration. Therefore, these rules are obsolete and must be repealed.

No public comments were received on these repeals.

SUBCHAPTER A. GENERAL RULES

1 TAC §27.1

The repeal is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The repeal affects Title 15 of the Election Code.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER C. GENERAL REPORTING RULES

1 TAC §27.101

The repeal is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The repeal affects Title 15 of the Election Code.

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

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Anne Temple Peters
Executive Director
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1001

The Texas Education Agency (TEA) adopts new §61.1001, concerning prior year maximum compressed tax rate. The rule is adopted without changes to the proposed text as published in the January 17, 2020, issue of the *Texas Register* (45 TexReg 454). The rule will not be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available maximum compressed tax rates for the 2020-2021 school year to account for statewide tax compression implemented by the legislature in the 2019-2020 school year.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.2551, Maximum Compressed Tax Rate, which provides the calculation to develop the maximum compressed tax rates (MCRs) for school districts. TEA will calculate and make available the maximum tier one tax rate for each district on an annual basis.

Adopted new §61.1001 provides that, for purposes of determining a district's MCR under TEC, §48.2551(b), for the 2020-2021 school year, the value of the district's prior year MCR is $0.93.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 17, 2020, and ended February 18, 2020. A public hearing on the proposal was held on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. No public comments were received on this proposal.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts' maximum maintenance and operations compressed tax rates; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.2551, 48.004, and 48.011, as added by House Bill 3, 86th Texas Legislature, 2019.

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

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TRD-202001047
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 30, 2020
Proposal publication date: January 17, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1002

The Texas Education Agency (TEA) adopts new §61.1002, concerning maximum compressed tax rate limitations. The amendment is adopted without changes to the proposed text as published in the January 17, 2020 issue of the *Texas Register* (45 TexReg 455) and will not be republished. The adopted new rule reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available maximum tier one compressed tax rates when compression would otherwise result in a tax compression below the allowable threshold.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.2551, Maximum Compressed Tax Rate, which provides the calculation to develop the maximum compressed tax rates (MCRs) for school districts. TEA will calculate and make available the maximum tier one tax rate for each district on an annual basis.

Adopted new §61.1002 provides that, for purposes of determining a district's MCR for a given tax year under TEC, §§48.2551(b)(1)(B), 48.2551(c), and 48.2552(b), if the calculation of a school district's maximum compressed maintenance and operations (M&O) tax rate for that year would result in an MCR less than 90% of the highest district's maximum compressed M&O tax rate, the district's maximum compressed M&O tax rate is 90% of the highest maximum compressed M&O tax rate for that year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 17, 2020, and ended February 18, 2020. A public hearing on the proposal was held on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. No public comments were received on this proposal.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts' maximum maintenance and operations compressed tax rates; TEC, §48.2552, as added by HB 3, 86th Texas Legislature, 2019, which requires TEA each year to evaluate the difference between school districts' maximum compressed tax rates, as determined under TEC, §48.2551, to provide for a limitation on maximum compressed tax rate; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.2551, 48.2552, 48.004, and 48.011, as added by House Bill 3, 86th Texas Legislature, 2019.

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

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TRD-202001048

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 30, 2020

Proposal publication date: January 17, 2020

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

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19 TAC §61.1011

The Texas Education Agency (TEA) adopts the repeal of §61.1011, concerning additional state aid for tax reduction. The repeal is adopted without changes to the proposed text as published in the January 10, 2020 issue of the *Texas Register* (45 TexReg 265) and will not be republished. The adopted repeal is necessary because the authorizing statute expired September 1, 2017.

REASONED JUSTIFICATION: Prior to September 1, 2017, Texas Education Code (TEC), §42.2516, allowed school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under former TEC, §42.2516, detailed the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money was needed or if the state and local revenue received through formula funding was sufficient so that hold harmless money would not have been needed.

Since the provisions of former TEC, §42.2516, which provided for the calculation of additional state aid for tax reduction expired September 1, 2017, there is no longer a need for a rule detailing the calculations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 10, 2020, and ended February 10, 2020. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §42.2516, which, prior to September 1, 2017, provided for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. Former TEC, §42.2516(g), authorized the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §42.2516, as this section existed before the expiration of subsections (b)-(f) on September 1, 2017.

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 March 10, 2020.

TRD-202001069

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 30, 2020

Proposal publication date: January 10, 2020

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

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING TRANSITION ASSISTANCE FOR HIGHLY MOBILE STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE

19 TAC §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, 89.1617

The Texas Education Agency (TEA) adopts new §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, and 89.1617, concerning transition assistance for highly mobile students who are homeless or in substitute care. New §§89.1601, 89.1603, 89.1605, 89.1611, 89.1613, and 89.1615 are adopted with changes to the proposed text as published in the November 22, 2019 issue of the *Texas Register* (44 TexReg 7120) and will be republished. New §§89.1607, 89.1609, and 89.1617 are adopted without changes to the proposed text as published in the November 22, 2019 issue of the *Texas Register* (44 TexReg 7120) and will not be republished. The adopted new rules assist with the transition of students who are homeless or in substitute care from one school to another and provide local education agencies (LEAs) with guidance on the requirements of Texas Education Code (TEC), §25.007.

REASONED JUSTIFICATION: Senate Bill (SB) 1220, 85th Texas Legislature, 2017, amended TEC, §25.007, relating to transition assistance for students who are homeless or in substitute care. SB 1220 addressed the continuity of education for this population of students, including placement in comparable courses or education programs and provision of comparable services during the referral process, and authorized the commissioner to establish rules to implement TEC, §25.007.

Adopted 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter FF, Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care, addresses school district and open-enrollment charter school responsibilities, as follows.

Adopted §89.1601, Definitions, provides clarity by defining terms having meanings specific to new Chapter 89, Subchapter FF. In response to public comment, the definition of educational decision-maker in paragraph (6) was modified at adoption to include a person designated by a court.

Adopted §89.1603, Transfer of Student Records and Transcripts, addresses responsibilities for LEAs to request, send, and receive student records and transcripts as required by TEC, §25.002(a-1), to ensure a seamless enrollment and transition. In response to public comment, subsection (e) was modified at adoption to change the word "shall" to "may" to be more permissive in reporting noncompliance regarding requested information by a district. Subsection (e) was also modified at adoption to provide more specification as to the TEA office that would receive reports of noncompliance.

Adopted §89.1605, Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student, establishes systems that LEAs must develop to ease the transition during the first two weeks of enrollment at a new school. The adoption addresses welcome packets, introductions, and a process to ensure that eligible students receive nutrition benefits. It also addresses the necessary elements for the required enrollment conference.

In response to public comment, the following changes were made to §89.1605 at adoption. Subsection (a)(1) was modified to clarify that information in the welcome packet is to be provided as applicable. Subsection (b)(2) was modified to specify the type of interventions to be addressed as part of the enrollment conference. Subsection (b)(2)(H) was modified to add relative caregiver to the list of individuals who may comprise the enrollment conference. Subsection (b)(2)(K) was modified to stipulate that a parent and/or guardian may participate in the enrollment conference unless their rights have been restricted by the court. Proposed subsection (b)(3), regarding development of systems to ease transitions and establish procedures to lessen the adverse impact of movement of a student, was deleted and will be included in guidance documents. Subsection (c) was modified to prevent the creation of a training requirement that is not statutorily authorized.

Adopted §89.1607, Award of Credit, addresses the creation and examination of existing local policies to assist LEAs with the award of credits, including credit by examination, credit recovery plans, course transition plans, and personal graduation plans. No changes were made to this rule since published as proposed.

Adopted §89.1609, Placement in Educational Programs and Courses, addresses LEA responsibilities relating to course and educational program placement in order to ensure continuity for students. No changes were made to this rule since published as proposed.

As proposed, adopted §89.1611, Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care, would have set forth LEA responsibilities relating to access and participation in educational and extracurricular programs, including tutoring programs, Communities in Schools or similar programs, and University Interscholastic League (UIL) participation to mitigate transition barriers to participation.

In response to public comment, the following changes were made to §89.1611 at adoption. Proposed subsections (a) and (b), regarding access to educational programs, including tutoring, were deleted and will be included in guidance documents. Additionally, instead of requiring appropriate school staff to complete and submit a UIL waiver form, language was added to only require staff to facilitate the process. Language was also added to paragraph (1) to clarify that a durational residence requirement may not prohibit a student from full participation in school activities.

Adopted §89.1613, Promotion of Postsecondary Information, addresses LEA responsibilities to promote postsecondary access and to ensure students are progressing toward graduation and are linked with appropriate higher education financial resources and supports in order to implement TEC, §28.02121 and §54.366, and 42 United States Code, §11432(g)(6)(A)(x). In response to public comment, subsection (a) was modified at adoption to remove reference to students being "on track" to graduate with endorsements and to hinge the subsection's requirements on the applicable requirements of TEC, §28.02121, regarding high school personal graduation plans.

Adopted §89.1615, Provision of Special Education Services, addresses LEA responsibilities to provide special education services and accept referrals made by previous school districts or open-enrollment charter schools for special education evalua-

tion to ensure the appropriate placement of services for students. In response to public comment, subsection (a) was modified at adoption to clarify that any written report of a full individual and initial evaluation must be completed in accordance with established timelines.

Adopted §89.1617, Notice to Student's Educational Decision-Maker and Caseworker, addresses the requirement in TEC, §25.007, that LEAs provide notice to the student's educational decision-maker or caseworker of information that significantly impacts the education of the student. The adoption includes the requirement passed by House Bill 1709, 86th Texas Legislature, 2019, requiring school districts and open-enrollment charter schools to provide notice to the student's educational decision-maker and caseworker regarding the appointment of a surrogate parent for the child under TEC, §29.0151. No changes were made to this rule since published as proposed.

At proposal, TEA had determined that the adoption would require a written report or other paperwork but would not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions could have varied. In such an instance, the proposal would have imposed the least burdensome requirement possible to achieve the objective of the proposed rule. Section 89.1611 would have required that appropriate district or charter school staff complete and submit a UIL waiver of residence application form for students who are homeless or in substitute care plan and to participate in varsity athletics or other UIL-sponsored activities. However, since §89.1611 was modified at adoption to change the requirement to complete and submit a UIL waiver to only facilitate the process, this paperwork requirement assessment is no longer applicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 22, 2019, and ended December 23, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas Association of School Boards (TASB) commented that in §89.1601, the definition of educational decision maker should also include that the person can be designated by the court to serve in this role.

Agency Response: The agency agrees and has modified §89.1601(6) at adoption to include that an educational decision maker can also be designated by the court.

Comment: Disability Rights Texas commented that the definition of surrogate parent under 20 U.S.C. §1415(b) should be added to §89.1601.

Agency Response: The agency disagrees with adding the term surrogate parent, as it does not appear elsewhere in Chapter 89, Subchapter FF. Therefore, defining it may cause confusion.

Comment: TASB commented that §89.1603(e) will create a new reporting requirement for districts seeking records to report a noncompliant district to TEA even if there might be extenuating circumstances that prevent the sending district from providing records. TASB commented that allowing permissive language will allow districts more flexibility in this reporting requirement.

Agency Response: The agency agrees and has modified §89.1603(e) at adoption to include permissive language to allow districts flexibility when reporting noncompliant districts. The agency also modified this subsection to specify that the TEA division responsible for TREx support would receive reports of noncompliance.

Comment: Disability Rights Texas commented that §89.1605 should require additional individuals to participate in the enrollment conference such as extracurricular activity sponsors or athletic instructors or directors.

Agency Response: The agency encourages districts to include educators of different capacities to participate in the enrollment conference; however, the agency disagrees with mandating additional individuals than those included on the list because districts may not have those individuals at the district or campus level to participate.

Comment: A senior policy attorney with the Texas Department of Family and Protective Services (DFPS) commented that requirements of §89.1605(a)(1) and (b)(2) may not apply to all students and should include language to recognize that elementary students may not need the same information as secondary students.

Agency Response: The agency agrees in part and has modified §89.1605(a)(1) at adoption to clarify that requirements are not applicable to all students. Districts may use the applicable provisions of subsection (b)(2) as needed. Best practices for conducting enrollment conferences for elementary students will be addressed in agency guidance.

Comment: Four individuals, including a surrogate parent, high school registrar, a Texas counselor, and a foster care coordinator, commented that §89.1605(a)(1) should include fee waivers for instructional tools and supplies required for instructional practices. These individuals also stated that §89.1605(b)(2) should require enrollment conferences to include trauma-informed practices and proactive interventions as topics of discussion.

Agency Response: The agency agrees in part and disagrees in part. The agency agrees with and has modified §89.1605(b)(2) at adoption to integrate trauma-informed interventions during enrollment conferences. The agency disagrees that fee waivers for instructional tools and supplies should be added to the rule. Any additional information to clarify fee waivers will be addressed in guidance and should be addressed at the local education agency level.

Comment: The DFPS attorney commented that in rare cases enrollment conferences specified in §89.1605(b)(2) may not be appropriate for students who are in substitute care and recommended adding language that caseworkers may request that a conference not be held for a student in substitute care.

Agency Response: The agency disagrees that language should be added to allow caseworkers to request that enrollment conferences not be held for students in substitute care. Students are benefitted by enrollment conferences with educators assessing and evaluating needs, academic progress, interventions, and support services of students who are homeless or in substitute care.

Comment: The DFPS attorney commented that §89.1605(b)(2) should separately list individuals invited to attend enrollment conferences specific to students in substitute care.

Agency Response: The agency disagrees that §89.1605(b)(2) should be modified to create a separate list for enrollment conferences specific to students in substitute care because there may be students who are dually identified as homeless and in substitute care.

Comment: The DFPS attorney commented that §89.1605(b)(2)(H) should be modified to add a relative caregiver as an individual who may participate in enrollment conferences.

Agency Response: The agency agrees and has modified §89.1605(b)(2)(H) at adoption to add relative caregiver.

Comment: The DFPS attorney recommended that language should be added to §89.1605(b)(2)(K) that a parent or guardian shall participate unless the caseworker indicates the parent's or guardian's right to participate have been restricted.

Agency Response: The agency agrees and has modified §89.1605(b)(2)(K) at adoption to include that a parent and/or guardian may attend an enrollment conference, unless the caseworker for a student in substitute care indicates that a parent's and/or guardian's rights to participate have been restricted by the court.

Comment: TASB commented in agreement that §89.1605(b) should be permissive regarding the individuals who may be involved in the enrollment conference because some of the positions mentioned may not be available in all districts. TASB, however, disagreed that the agency is allowed to create an ongoing enrollment conference for issues not related to transition as required by §89.1605(b)(3).

Agency Response: The agency agrees and has modified §89.1605(b) at adoption to remove paragraph (3) relating to ongoing enrollment conferences. The agency plans to include best practices in future guidance documents.

Comment: Disability Rights Texas commented that §89.1605(b) should include an additional topic for enrollment conferences and that §89.1605(c) should include a time frame for professional development trainings.

Agency Response: The agency disagrees with including additional topics for enrollment conferences and that there should be a timeline added for district staff to complete the professional development trainings. In response to other public comment, the agency has modified §89.1605(b) at adoption to remove paragraph (3) relating to ongoing enrollment conferences. The agency plans to include best practices in future guidance documents. Also in response to other public comment, the agency has modified §89.1605(c) at adoption to support that staff members may be trained without creating a training requirement that is not statutorily authorized. Districts should have the flexibility to provide these trainings.

Comment: TASB commented that TEC, §25.007, does not authorize the professional development required by proposed §89.1605(c). TASB also stated that although districts should ensure appropriate staff have the necessary information to support highly mobile students, the proposed rule would create additional professional development requirements not authorized by statute.

Agency Response: The agency agrees and has modified §89.1605(c) at adoption to support that staff members may be trained without creating a training requirement that is not statutorily authorized.

Comment: TASB commented that the language in §89.1607(d) should align with 19 TAC §74.26(e) regarding award of credit for a student who is homeless or in substitute care and successfully completes only one semester of a two-semester course.

Agency Response: The agency disagrees. The language in §89.1607(d) aligns with action recently adopted by the State Board of Education to update 19 TAC §74.26(e) to clarify that a district may award credit proportionately for successful completion of half of a course regardless of the time duration of the course.

Comment: TASB commented regarding overlapping of existing requirements, including §89.1607(e)(3), which requires districts to develop and administer a personal graduation plan for each student in homeless and substitute care as required by TEC, §28.0212; however, TEC, §28.0212, requires districts to develop a personal graduation plan for students who do not perform satisfactorily on a state assessment.

Agency Response: The agency disagrees. The language in §89.1607(e)(3) clarifies the personal graduation plan should be developed and administered for each student in junior high or middle school as required by TEC, §28.0212.

Comment: TASB commented that §89.1611 requires districts to provide programs at nominal or no cost; however, the TEC requires TEA to make a rule that promotes practices.

Agency Response: The agency agrees and has modified §89.1611 at adoption to exclude the requirements for access to educational programs, including tutoring, by removing proposed subsections (a) and (b). The agency plans to include best practices and strategies for districts to provide programs at nominal or no cost in future guidance. The adopted rule retains language relating to UIL participation; however, language was added to only require staff to facilitate the process rather than to complete and submit a UIL waiver form.

Comment: TASB commented that proposed §89.1611(c)(1) should align with TEC, §25.001(f), which states a durational residence requirement may not be used to prohibit a child from fully participating in any activity sponsored by the district. TASB commented that the proposed rule might confuse districts' ability to prohibit students from participating in activities for other reasons.

Agency Response: The agency agrees and has modified §89.1611(1) at adoption to align with TEC, §25.001(f).

Comment: Disability Rights Texas commented that §89.1611(a) should include estimates of all fees for any costs associated with participation in academic activities.

Agency Response: In response to this and other comments, the agency has modified §89.1611 at adoption to exclude the requirements for access to educational programs, including tutoring, by removing proposed subsections (a) and (b). The agency plans to include best practices and strategies for districts to provide programs at nominal or no cost in future guidance.

Comment: TASB commented on §89.1613(a), agreeing school staff should work to assist students with graduation; however, TASB noted that the regulation is written to require that all of these students are on track to graduate when this unfortunately may not always be the case.

Agency Response: The agency agrees and has modified §89.1613(a) at adoption to remove reference to students "on track" to graduate. School staff will be required to work to their best ability to assist students with graduation.

Comment: An education service center staff member commented that §89.1615(a) requires districts to ensure a school referral meets timelines but that §89.1011(a) does not have a timeline requirement for school referrals.

Agency Response: The agency agrees that further clarity is necessary and has modified §89.1615(a) at adoption to specify that the requirements for any written report of full individual and initial evaluation must be completed in accordance with timelines established in §89.1011.

Comment: Disability Rights Texas commented that the agency should add references to Section 504 services in §89.1615, as well as a new subsection (c) relating to the appointment of surrogate parents for certain students placed in a residential facility who are eligible for special education services.

Agency Response: The agency disagrees because the agency does not have jurisdiction over Section 504. In addition, agency rules related to the appointment of surrogate parents are found in Chapter 89, Subchapter AA, Commissioner's Rules Concerning Special Education Services. Having additional requirements related to the appointment of surrogate parents in Chapter 89, Subchapter FF, could cause confusion. The agency will keep these comments in mind when considering future revisions to Chapter 89, Subchapter AA.

Comment: Disability Rights Texas commented in support of creating systems to improve processes for youth in foster care across Texas who are transitioning between schools.

Agency Response: The agency agrees that creating systems to improve processes for youth in foster care across Texas schools is important to mitigating academic barriers.

Comment: An education service center specialist commented in support of the proposal's new requirements for students who are homeless or in substitute care, stating that data shows highly mobile students are impacted academically by numerous school transfers and transitions they experience so any support that districts can provide to ensure a smooth transition and maintain academic progress is critical.

Agency Response: The agency agrees strengthening school transitions for students who are homeless or in substitute care mitigates barriers to their academic success.

Comment: An associate professor commented that there should be state funding provided to create a liaison position that serves as both a foster care and homeless liaison. The associate professor stated that typically individuals are randomly assigned to serve in these roles without resources or time to serve students effectively.

Agency Response: The agency disagrees. Districts are federally mandated pursuant to the McKinney-Vento Homeless Assistance Act (42 USC, §11432(g)(1)(J)(ii)) to designate a homeless liaison to ensure homeless children and youth are identified and enrolled with a full and equal opportunity to succeed in schools. In addition, districts, pursuant to TEC, §33.904, are required to designate an individual to act as a liaison to facilitate enrollment or transfer of a child who is in conservatorship of the state.

Comment: A school administrator commented that students experiencing homelessness or in substitute care traditionally have financial, transportation, and family support barriers that keep them from participating in UIL and extracurricular activities; therefore, emphasis should be placed on academics. The administrator commented in support of welcome packets, easing enrollment processes, and systems in place for earning credits.

Agency Response: The agency recognizes the importance of both academic and extracurricular activities, but disagrees with the proposition that emphasis should only be placed on academics. TEC, §25.007, requires that districts and open-enrollment charter schools promote practices that facilitate access for students who are homeless or in substitute care to extracurricular activities.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §25.002(a-1), which requires school districts and open-enrollment charter schools to transfer student records to the district to which the request is made not later than the 10th working day after the date a request for the information is received by the district; and TEC, §25.007(c), which authorizes the commissioner to establish rules to facilitate the transition between schools of children who are homeless or in substitute care.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §25.002(a-1) and §25.007(c).

§89.1601. Definitions.

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

(1) Homeless--This term has the meaning assigned to the term "homeless children and youths" under 42 United States Code (USC), §11434a.

(2) Homeless liaison--A person designated by a school district or an open-enrollment charter school pursuant to the McKinney-Vento Homeless Assistance Act (42 USC, §11432(g)(1)(J)(ii)), to ensure homeless children and youth are identified and enrolled, with a full and equal opportunity to succeed, in schools.

(3) Substitute care--The placement of a child who is in the conservatorship of the Texas Department of Family and Protective Services (DFPS) in care outside the child's home. The term includes foster care, institutional care, pre-adoptive homes, placement with a relative of the child, or commitment to the Texas Juvenile Justice Department under Texas Family Code, §263.001(a)(4).

(4) Foster care liaison--The individual each local educational agency appoints to act as a liaison to facilitate enrollment or transfer of a child who is in conservatorship of the state, pursuant to Texas Education Code, §33.904.

(5) Foster care--Twenty-four-hour substitute care for children placed away from their parents or guardians and for whom DFPS has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes.

(6) Educational decision-maker--A person designated by DFPS or a court to make education decisions on behalf of youth in substitute care.

(7) Enrollment conference--A student-centered meeting for a newly enrolled student to identify academic and extracurricular interests; introduce school processes and opportunities for engagement; develop course and instructional strategies; review credits and assessment information; determine social-emotional support; and communicate confidential information that may impact a student's success, if needed.

(8) Records--Documents in printed or electronic form that include, but are not limited to, student transcripts; individual course grades; academic achievement records; course credits, whether full or partial; individualized education program referrals; intervention data; immunizations; state assessment scores; student attendance data; disciplinary reports; graduation endorsements; special education/Section

504 committee records; performance acknowledgements; and personal graduation plans.

§89.1603. Transfer of Student Records and Transcripts.

(a) Each school district and open-enrollment charter school must ensure that copies of student records are made available to schools to which students who are homeless or in substitute care transfer.

(b) Each school district and open-enrollment charter school is required to transfer student records within 10 working days of receipt of a request from a district or charter school to which a student who is homeless or in substitute care enrolls, as required by Texas Education Code (TEC), §25.002(a-1). The discretionary authority under TEC, §31.104(d), to withhold records of a student if the student has not returned or paid for instructional materials or technological equipment does not exempt a district or charter school from the mandatory provision in TEC, §25.002, to send records to another public school in which the student enrolls.

(c) Proof of enrollment in a different school district or open-enrollment charter school permits retroactive withdrawal to the date a student enrolled in the new school. The date of enrollment in the new district or charter school is considered the date of withdrawal from the previous district or charter school.

(d) Student records must be requested, sent, and received using the Texas Records Exchange (TREx) system.

(e) If a school district or an open-enrollment charter school fails to receive the required information within 10 working days, the requesting district or charter school may report the noncompliant district or charter school to the division responsible for TREx Support at the Texas Education Agency.

§89.1605. Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student.

(a) Each school district and open-enrollment charter school shall develop systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school. These systems shall include the following:

(1) welcome packets containing applicable information regarding enrollment in extracurricular activities, club activities, information on fee waivers, tutoring opportunities, the student code of conduct, and contact information for pertinent school staff such as counselors, nurses, social workers, the foster care liaison, the homeless liaison, the principal and any assistant principals, and related contacts;

(2) introductions for new students that maintain student privacy and confidentiality to the school environment and school processes by school district or charter school faculty, campus-based student leaders, or ambassadors; and

(3) mechanisms to ensure that a process is in place for all students who qualify to receive nutrition benefits upon enrollment, as all students who are homeless or in substitute care are eligible for United States Department of Agriculture Child Nutrition Programs. The process must expedite communication with the district or charter school nutrition coordinator to ensure that eligible students are not charged in error or experience delays in receiving these benefits.

(b) A school district or an open-enrollment charter school shall convene an enrollment conference with the student within the first two weeks of enrollment or within the first two weeks after the student is identified as homeless or in substitute care.

(1) The convening of the enrollment conference shall not delay or impede the enrollment of the student.

(2) The enrollment conference shall address the student's credit recovery, credit completion, attendance plans and trauma-informed interventions, interests and strengths, discipline or behavior concerns, previous successes, college readiness, and social and emotional supports as well as district policies relating to transfers and withdrawals and communication preferences with parents or guardians. The enrollment conference may be comprised of:

(A) school administrators;

(B) homeless or foster care liaisons;

(C) a social worker;

(D) teachers;

(E) counselors;

(F) dropout prevention specialists;

(G) attendance/truancy officers;

(H) the relative caregiver, foster placement caregiver, or case manager;

(I) the Texas Department of Family and Protective Services (DFPS) designated educational decision-maker;

(J) the DFPS caseworker, Court Appointed Special Advocates (CASA) volunteer, or other volunteer, as applicable; and

(K) a parent and/or guardian, unless the caseworker indicates the parent's and/or guardian's rights to participate have been restricted by the court.

(c) Pertinent staff members (such as principals, registrars, counselors, designated liaisons, nutrition coordinators, transportation specialists, etc.) should be knowledgeable concerning communication, processes, and procedures for facilitating successful school transitions for students who are homeless or in substitute care.

(d) For each district or charter school, the Texas Records Exchange (TREx), the Personal Identification Database (PID), or the Person Enrollment Tracking (PET) application must be used to expedite coordination and communication between the sending and receiving schools.

§89.1611. Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care.

Appropriate school district or open-enrollment charter school staff must facilitate the process to complete and submit a University Interscholastic League (UIL) waiver of residence application form for a student who is homeless or in substitute care and plans to participate in varsity athletics or other UIL-sponsored activities.

(1) Districts and charter schools must comply with Texas Education Code, §25.001(f), and a durational residence requirement may not prohibit a student in substitute care from fully participating in any activity sponsored by the school district.

(2) Students in foster care remaining in their school of origin but residing outside of the school district of attendance shall be afforded a waiver, as allowed under UIL Constitution and Contest Rules Section 442: Residence in School District and Attendance Zone.

§89.1613. Promotion of Postsecondary Information.

(a) School district and open-enrollment charter school counselors or other designated staff shall work with district homeless and foster care liaisons to ensure that all students who are identified as homeless or in substitute care graduate with endorsements, if applicable, and have postsecondary plans identified in their personal graduation plans, to the extent required by Texas Education Code (TEC), §28.02121.

(b) School district and open-enrollment charter school counselors or other designated staff must inform unaccompanied homeless youths of their rights and status as independent students for the purpose of applying for financial aid for higher education and provide verification of such status for the Free Application for Federal Student Aid (FASFA), pursuant to 42 United States Code, §11432(g)(6)(A)(x).

(c) Each school district and open-enrollment charter school shall ensure that a student in substitute care who is enrolled in Grade 11 or 12 in that district or charter school is provided information regarding tuition and fee exemptions under TEC, §54.366, for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit.

§89.1615. Provision of Special Education Services.

(a) When a student who is homeless or in substitute care transfers into a school district or an open-enrollment charter school after being referred by a previous district or charter school for a special education evaluation, the receiving district or charter school must accept the referral and ensure that any written report of a full individual and initial evaluation must be completed in accordance with the timelines established in §89.1011 of this title (relating to Full Individual and Initial Evaluation).

(b) When a student who is already eligible for special education and is homeless or in substitute care transfers into a school district or an open-enrollment charter school during the school year, the receiving district or charter school must ensure that it meets the student transfer requirements of §89.1050(j) of this title (relating to The Admission, Review, and Dismissal Committee).

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 March 10, 2020.

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

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §§97.1061, 97.1063, 97.1064

The Texas Education Agency (TEA) adopts amendments to §§97.1061, 97.1063, and 97.1064, concerning interventions and sanctions for campuses, campus intervention teams, and campus turnaround plans. The amendments to §97.1061 and §97.1064 are adopted with changes to the proposed text as published in the September 20, 2019 issue of the *Texas Register* (44 TexReg 5347) and will be republished. The amendment to §97.1063 is adopted without changes to the proposed text as published in the September 20, 2019 issue of the *Texas Register* (44 TexReg 5347) and will not be republished. The adopted amendments implement the statutory provisions in accordance with Senate Bill (SB) 1488, SB 1566, and House Bill (HB) 2263, 85th Texas Legislature, 2017. The adopted amendments also clarify intervention activities required in Texas Education Code (TEC), Chapter 39A, Accountability Interventions and Sanctions.

REASONED JUSTIFICATION: Section 97.1061, Interventions and Sanctions for Campuses, establishes the required interventions for campuses that receive an unacceptable rating and describes some of the duties of the campus intervention team (CIT). The adopted amendment to this section aligns with the agency's current intervention framework and changes from the 85th Texas Legislature, 2017, as follows.

Subsection (a) was modified to remove the requirement to engage in the Texas Accountability Intervention System (TAIS), as this framework is no longer used by the agency.

Subsection (b) was modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

In response to public comment, the agency removed proposed subsection (h) at adoption to align with HB 2263, 85th Texas Legislature, 2017. Subsequent subsections were re-lettered accordingly.

Section 97.1063, Campus Intervention Team, defines the members of the CIT and their responsibilities. The adopted amendment to this section includes adding the principal's direct supervisor as a member of the CIT, incorporating a conforming rule change for the external CIT member (the professional service provider was removed in a rule change to 19 TAC §97.1051), and updating TEC references due to changes from the 85th Texas Legislature, 2017, as follows.

Subsection (a) was modified to update references to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (b) was modified to update the required members of the CIT. Paragraph (1) was deleted to remove the requirement for a professional service provider (PSP) to conform to rules changes in §97.1051. The agency's updated school improvement framework and processes no longer include a PSP. The agency will still require a CIT member who is not employed by the district, and this CIT member will be vetted by the agency or its technical assistance provider. Adopted new paragraph (2) adds the requirement for the campus principal's direct supervisor to be a member of the CIT if the district coordinator of school improvement (DCSI) is not the principal's direct supervisor. Adopted new subsection (c) adds the requirement for an education professional who is not employed by the campus or district to assist in conducting the needs assessment.

No changes were made to §97.1063 since published as proposed.

Section 97.1064, Campus Turnaround Plan, describes who must develop a campus turnaround plan, what the plan should include, and timelines for submission of the plan. The adopted amendment to this section includes alignment to changes in TEC from the 85th Texas Legislature, 2017, timeline clarifications, and a general description of the methodology used by the agency to approve or reject turnaround plans, as follows.

Subsection (a) was modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved elements of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (d) was modified to move the statements regarding stakeholder input on a completed turnaround plan as part of subsections (d) and (e) to make it clearer that stakeholder input on the completed plan is separate from the requirement to solicit stakeholder input in plan development. Subsection (e) was also modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (f) was modified to align the required components of the Campus Turnaround Plan to the required components stated in TEC, §39A.105. A requirement was also added that the plan must include how the board of trustees will support the oversight of academic achievement and student performance, per SB 1566, 85th Texas Legislature, 2017.

Adopted new subsection (h) implements the timeline requirements per TEC, §39A.107(a-1). Adopted new paragraph (3) describes the methodology used to make a determination on the approval of a turnaround plan.

Adopted new subsection (i) implements the timeline requirements for submitting modified turnaround plans created per TEC, §39A.107(a-2).

Adopted new subsection (k) clarifies the requirement, per TEC, §39A.106, that the commissioner-approved turnaround plan must be implemented once the campus receives a third consecutive unacceptable performance rating. In response to public comment, rule language was clarified at adoption to refer to unacceptable ratings, which are defined by TEC, §39.054(a), and TEC, §39A.0545.

Adopted new subsection (l) specifies that the commissioner may appoint a conservator, monitor, management team, or board of managers per TEC, §39A.102.

The adopted amendments to 19 TAC §§97.1061, 97.1063, and 97.1064 also include technical edits to conform to *Texas Register* style and formatting requirements.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 20, 2019 and ended October 21, 2019. Following is a summary of public comments received and the corresponding agency responses.

Comment: The Texas School Alliance (TSA), Spring Branch Independent School District (ISD), two district administrators, the Texas Association of School Boards (TASB), and the Texas State Teachers Association (TSTA) questioned the inclusion of a two-year requirement for the campus intervention team after a campus met standard in relation to proposed 19 TAC §97.1061(h).

Agency Response: The agency agrees that House Bill 2263, 85th Texas Legislature, 2017, removes this requirement. Therefore, proposed §97.1061(h) has been removed at adoption and subsequent sections have been re-lettered.

Comment: TSA, Spring Branch ISD, and two district administrators suggested clarifying the term "unacceptable rating" to "overall F" in 19 TAC §97.1061(e), (f), (g), and (h).

Agency Response: The agency disagrees. The term "unacceptable rating" is consistent with statutory language found in TEC, §39.054. TEC, §39A.0545, states in certain situations, the commissioner of education is required to implement interventions and sanctions that apply to an unacceptable campus based upon a Needs Improvement rating.

Comment: Spring Branch ISD and two district administrators suggested replacing the term "met standard in the current year" to "received an overall rating of A, B, C or D in the current year" in 19 TAC §97.1061(h).

Agency Response: The agency disagrees that the section should be modified as suggested by the commenters. However, in response to other public comment, proposed §97.1061(h) was removed at adoption.

Comment: TASB and TSTA recommended striking proposed 19 TAC §97.1063(b)(2) due to it being unnecessary that the principal's direct supervisor be a member of the campus intervention team.

Agency Response: The agency disagrees. Including the principal's direct supervisor as a member of the campus intervention team ensures appropriate support for the low-performing campus and alignment or access to district resources.

Comment: TSA, Spring Branch ISD, two district administrators, TASB, and TSTA recommended clarifying the term "unacceptable rating" to "overall F" throughout 19 TAC §97.1064.

Agency Response: The agency disagrees. The term "unacceptable rating" is consistent with statutory language found in TEC, §39.054. TEC, §39A.0545, states in certain situations, the commissioner of education is required to implement interventions and sanctions that apply to an unacceptable campus based upon a Needs Improvement rating.

Comment: TSA, Spring Branch ISD, two district administrators, and TASB recommended changing the term "academically acceptable rating" to "overall rating of A, B, C or D" in 19 TAC §97.1064(j) and (k).

Agency Response: The agency disagrees. The term "acceptable rating" is consistent with statutory language found in TEC, §39.054. Also, TEC, §39A.0545, expands interventions and sanctions to campuses with a consecutive overall performance rating of D and to campuses with overall performance ratings of A, B, or C with an F domain following a year in which the campus developed and implemented a targeted improvement plan.

Comment: TASB recommended clarifying the term "academically acceptable rating" in 19 TAC §97.1064(k).

Agency Response: The agency agrees and has clarified the provision. Section 97.1064(k) has been modified at adoption to clarify that if the campus receives an unacceptable rating in the year following the development of the turnaround plan, it must implement the turnaround plan. The plan must be implemented until the campus has operated for two consecutive years without an unacceptable rating.

Comment: TSA, Spring Branch ISD, and two district administrators suggested adjusting the date of June 15 to a date in April, specifically April 15, in 19 TAC §97.1064(h).

Agency Response: The agency disagrees. TEC, §39A.107(a-1), outlines the requirement that not later than June 15 of each year, the commissioner shall, in writing, approve or reject any campus turnaround plan.

Comment: TSA, Spring Branch ISD, and two district administrators recommended revising 19 TAC §97.1064(i)(1) to state the

campus has the option of assistance from agency staff when creating a modified turnaround plan.

Agency Response: The agency disagrees. TEC, §39A.107(a-2), outlines the requirement that if the commissioner rejects a campus turnaround plan, the district must create a modified plan with assistance from agency staff.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §39A.051, which requires the commissioner to assign a campus intervention team to campuses whose performance is below any standard under TEC, §39.054(e); TEC, §39A.052, which defines the education professionals that may be included on the campus intervention team; TEC, §39A.053, which requires the campus intervention team to conduct an onsite needs assessment and describes the requirements of that needs assessment; TEC, §39A.054, which requires the campus intervention team to make recommendations based on the needs assessment; TEC, §39A.055, which requires the campus intervention team to assist the campus in developing and monitoring a targeted improvement plan; TEC, §39A.056, which requires the campus intervention team to provide notice of the public meeting regarding the development of the targeted improvement plan; TEC, §39A.058, which requires the board of trustees, assisted by the campus intervention team, to submit the targeted improvement plan to the commissioner for approval; TEC, §39A.059, which describes the campus intervention team's responsibilities in assisting the campus in implementing the targeted improvement plan; TEC, §39A.060, which describes the continuing duties of the Campus Intervention Team; TEC, §39A.101, which requires the commissioner to order a campus that has received two consecutive unacceptable ratings to develop a campus turnaround plan; TEC, §39A.107(a-1), which requires the commissioner to approve or reject turnaround plans by June 15 of each year and outline concerns with rejected turnaround plans in writing; TEC, §39A.107(a-2), which requires the district to modify a rejected turnaround plan with assistance from agency staff. The modified plan must be submitted within 60 days of its rejection. The commissioner must approve or reject the modified plan within 15 days of its submission; TEC, §39A.115, which authorizes the commissioner to adopt rules necessary to implement TEC, Chapter 39A, Subchapter C, Campus Turnaround Plan; TEC, §39A.251, which applies the interventions and sanctions to charters in the same manner as they apply to school districts and campuses; TEC, §39A.252, which requires the commissioner to adopt rules applying the interventions and sanctions to open enrollment charter schools; and TEC, §39A.902, which requires the commissioner to annually review performance of public schools and determine the appropriate levels of sanctions or interventions. It prohibits the commissioner from raising the accreditation or performance rating unless the district has demonstrated improved student performance. It also requires the commissioner to increase the level of sanction or intervention due to lack of improvement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§39A.051, 39A.052, 39A.053, 39A.054, 39A.055, 39A.056, 39A.058, 39A.059, 39A.060, 39A.101, 39A.107(a-1) and (a-2), 39A.115, 39A.251, 39A.252 and 39A.902.

§97.1061. Interventions and Sanctions for Campuses.

(a) If a campus's performance is below any standard under Texas Education Code (TEC), §39.054(e), the campus shall engage in interventions as described by the Texas Education Agency (TEA).

(b) The commissioner shall assign members to a campus intervention team (CIT) as outlined in §97.1063 of this title (relating to Campus Intervention Team) and TEC, §39A.052.

(c) The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

(d) The campus intervention team shall:

(1) conduct a data analysis related to areas of low performance;

(2) conduct a needs assessment based on the results of the data analysis, as follows.

(A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the targeted improvement plan and, if applicable, campus turnaround plan;

(3) assist in the creation of a targeted improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the targeted improvement plan, using the following steps.

(i) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(ii) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(iii) All input provided by family and community members should be considered in the development of the final targeted improvement plan submitted to the TEA.

(B) The completed targeted improvement plan must be presented at a public hearing and approved by the board of trustees.

(C) The targeted improvement plan must be submitted to the commissioner of education for approval according to TEA procedures and guidance; and

(4) assist the commissioner in monitoring the implementation of the targeted improvement plan. The campus will submit updates to the TEA as requested that include:

(A) a description of how elements of the targeted improvement plan are being implemented and monitored; and

(B) data demonstrating the results of interventions from the targeted improvement plan.

(e) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a second consecutive year, the campus must engage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must develop a campus turnaround plan to be approved by the commissioner as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(f) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a third or fourth consecutive year, the campus must en-

gage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must implement the commissioner-approved campus turnaround plan as described in §97.1064 of this title.

(g) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or closure of the campus.

(h) Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under TEC, §39.054(e).

(i) Interventions and sanctions listed under this section begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

§97.1064. Campus Turnaround Plan.

(a) If a campus is assigned an unacceptable rating under Texas Education Code (TEC), §39.054(e), for two consecutive years, the campus must develop a campus turnaround plan to be approved by the commissioner of education in accordance with TEC, §§39A.103-39A.107.

(b) A charter campus subject to this section must revise its charter in accordance with §100.1033 of this title (relating to Charter Amendment). The governing board of the charter performs the function of the board of trustees for this section.

(c) The district may request assistance from a regional education service center or partner with an institution of higher education in developing and implementing a campus turnaround plan.

(d) Within 60 days of receiving a campus's preliminary accountability rating the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan. All input provided by family, community members, and stakeholders must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).

(e) The district shall notify stakeholders of their ability to review the completed plan and post the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39A.104. The district shall provide the following groups an opportunity to review and comment on the completed plan before it is submitted for approval to the board of trustees:

(1) the campus-level committee established under TEC, §11.251. If the campus is not required to have a campus-level committee under TEC, §11.251, the district shall provide an opportunity for professional staff at the campus to review and comment on the campus turnaround plan;

(2) teachers at the campus;

(3) parents; and

(4) community members.

(f) A campus turnaround plan must include:

(1) a detailed description of the method for restructuring, reforming, or reconstituting the campus;

(2) a detailed description of the academic programs to be offered at the campus, including instructional methods, length of school day and school year, academic credit and promotion criteria, and programs to serve special student populations;

(3) a detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources;

(4) written comments received from stakeholders described in subsection (e) of this section;

(5) the term of the charter, if a district charter is to be granted for the campus under TEC, §12.0522; and

(6) a detailed description for developing and supporting the oversight of academic achievement and student performance at the campus, approved by the board of trustees under TEC, §11.1515.

(g) Upon approval of the board of trustees, the district must submit the campus turnaround plan electronically to the TEA by March 1 unless otherwise specified.

(h) Not later than June 15 of each year, the commissioner must either approve or reject any campus turnaround plan prepared and submitted by a district.

(1) The commissioner's approval or rejection of the campus turnaround plan must be in writing.

(2) If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection.

(3) In accordance with TEC, §39A.107(a), the commissioner may approve a campus turnaround plan if the commissioner determines that the campus will satisfy all student performance standards required under TEC, §39.054(e), not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan. In order to make that determination, the commissioner will consider the following:

(A) an analysis of the campus and district's longitudinal performance data, which may be used to measure the expected outcomes for the campus;

(B) the district's success rate in turning around low-performing campuses, if applicable; and

(C) evaluation of the efficacy of the plan, with consideration given to whether the turnaround plan is sufficient to address the specific and expected needs of the campus.

(i) A district must submit a modified campus turnaround plan if the commissioner rejected the district's initial submission.

(1) The modified plan must be created with assistance from TEA staff, as requested by the district.

(2) The modified plan must be made available for stakeholder comment prior to board approval and be approved by the board prior to submission to the TEA.

(3) The district must submit the plan no later than the 60th day from the date the commissioner rejected the initial campus turnaround plan.

(4) The commissioner's decision regarding the modified plan must be given in writing no later than the 15th day after the commissioner receives the plan.

(j) A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

(k) A campus that has received an unacceptable rating for the school year following the development of the campus turnaround plan must implement its commissioner-approved campus turnaround plan with fidelity until the campus operates for two consecutive school years without an unacceptable rating.

(l) The commissioner may appoint a monitor, conservator, management team, or board of managers for a school district that has a campus that has been ordered to implement an updated targeted improvement plan. The commissioner may order any of the interventions as necessary to ensure district-level support for the low-performing campus and the implementation of the updated targeted improvement plan. The commissioner may make the appointment at any time during which the campus is required to implement the updated targeted improvement plan.

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

Filed with the Office of the Secretary of State on March 11, 2020.

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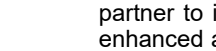

DIVISION 2. CONTRACTING TO PARTNER TO OPERATE A DISTRICT CAMPUS

19 TAC §97.1075

The Texas Education Agency (TEA) adopts an amendment to §97.1075, concerning contracting to partner to operate a campus under Texas Education Code (TEC), §11.174. The amendment is adopted with changes to the proposed text as published in the December 27, 2019 issue of the *Texas Register* (44 TexReg 8191) and will be republished. The adopted amendment modifies the rule to provide clarifications to existing statutory provisions.

REASONED JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under TEC, §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring.

The amendment to §97.1075(a) and relettered (j) reflect the renumbering of TEC, §42.2511, to TEC, §48.252, by House Bill 3, 86th Texas Legislature, 2019.

The amendment to subsection (c) clarifies the authorities over staffing at partner-operated campuses in a district to ensure that the operator has sole authority over staffing and prevent confusion in operation between the district and the operating partner. Subsection (c)(1)(C) stipulates that the operating partner has sole authority over assignment of district employees to the campus. The amendment moves the requirement for initial and final authority to supervise, manage, and rescind assignment of district employees from the campus from subsection (c)(1)(C) to new subsection (c)(1)(D). The new subsection also clarifies that the authority resides solely with the operating partner and adds a provision that districts must grant requests to rescind assignments within 20 working days. The number of days the district has to respond to the partner's request was increased from 15 working days to 20 working days in response to public comments from districts that 15 days was too short a timeframe to comply with the request. Subsection (c)(1)(E) clarifies that the operating partner directly manages and has sole responsibility for the evaluation of the campus principal or chief operating officer.

In subsection (c)(2), the amendment further clarifies the operating partner's authority over campus decisions to ensure that the operator has sole authority over the decisions as described in TEC, §11.174, and to prevent confusion in operation between the district and the operating partner. Paragraph (2) specifies that the operator has initial, final, and sole authority over curriculum decisions (subparagraph (A)); educational programs for specific student groups (subparagraph (B)); calendar and daily schedule (subparagraph (C)); use of assessments (subparagraph (D); and campus budget (subparagraphs (E) and (F)). Subparagraph (E) further clarifies that decisions for budget allocations under the authority of the operator include federal and state grants that the campus receives. New subparagraph (F) is established to provide clarity regarding the existing requirement for the operator to have sole authority over the implementation of the campus budget. Subparagraph (D) was modified at adoption to clarify that the operating partner has initial, final, and sole authority to select all assessments to be used on the campus.

In subsection (d), the amendment clarifies requirements for the performance contract. Subsection (d)(1) is amended to require the performance contract between the district and the operating partner to include a clear and unambiguous description of the enhanced authorities described in subsection (c) to ensure that these authorities are operationalized. In response to public comment, the statement that the contract may not be contingent on any rating issued by the TEA was removed from this subsection at adoption because it created confusion as to whether the district could enforce the performance targets in the performance contract. Therefore, the requirement that a performance contract not have contingencies when it is submitted to the agency for approval for benefits has been moved to 19 TAC §97.1079 to reduce confusion.

Subsection (d)(2) is amended to clarify the academic expectations and goals to be included in the contract. The provision to include a target for the School Progress Domain and the requirement for annual academic performance expectations is removed. Since the overall campus rating is an annual goal that is required in subsection (d)(2)(B), this allows the partner and district the flexibility to establish more frequent academic goals and expectations in the performance contract.

Subsection (d)(3) is amended to clarify that the annual financial report must be independent. In response to public comment, this subsection is updated at adoption to clarify that the audit applies to the part of partner organization that contracts to partner to operate a campus.

New subsection (d)(7) is added to require the performance contract to include a section describing the funding structure for the partnership. This ensures that the partner has the necessary resources to operate the campus. In response to public comment, this subsection is updated at adoption to clarify in subsection (d)(7)(C) that the campus budget includes all federal, state, and local funds due the campus.

Renumbered subsection (d)(8) is amended to include existing rule language to specify that the performance contract must include which resources the operating partner intends to purchase

from the district, including the cost of services. This ensures that the costs and resources needed to operate the campus are clear to both the operating partner and the district.

Subsection (d)(9) is amended to require that the performance contract include the operating partners' academic model description to ensure that this model is already established and that districts are aware of it prior to entering into the partnership.

Subsection (d)(11) is amended to require that the performance contract include details about the actions the district and/or operating partner will take in the case that the performance contract is breeched. The amendment requires the "specific and material" consequences to be described so that both parties are aware of and can take required actions. The provision stating that the contract may not be contingent on any rating issued by TEA is removed. As proposed, the provision would have been included in subsection (d). However, in response to public comment on subsection (d), the provision is adopted as part of 19 TAC §97.1079.

New subsection (e) is added to ensure that the district has done due diligence in ensuring that the operating partner has the capacity to manage the campus successfully.

The amendment to relettered subsection (g) provides a time limit for notifying TEA of contract amendments to ensure the notification is timely submitted.

New subsection (h) is established to allow existing language related to performance ratings to be in a separate subsection. The language is currently included in the subsection on monitoring.

Subsection (j) is amended to make conforming changes to cross references.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 27, 2019, and ended January 27, 2020. A public hearing on the proposal was held at 8:30 a.m. on January 10, 2020, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of public comments received and the corresponding agency responses, including testimony presented during the public hearing.

Comment: Raise Your Hand Texas (RYHT) commented that the rule assumes that the district contracts the operation of the campus and then releases responsibility of the campus and outcomes.

Agency Response: The agency disagrees. The negotiation and ongoing monitoring of the performance contract ensures that the district and operator are working in partnership to achieve mutually agreed-upon goals. To this end, 19 TAC §97.1079, Determination Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174, also requires the district employ at least one staff member fully dedicated to oversight of these partnerships. Districts remain ultimately responsible for campus performance under the agency's academic accountability system.

Comment: RYHT suggested that the rule should support more active district participation in the governance of the campus.

Agency Response: The agency disagrees. District staff can make up a minority of board members to the partner organization, as long as these partner board members are not also members of the district's board, and thus take an active role in the governance of the campus.

Comment: RYHT suggested that districts be allowed to create a new nonprofit corporation to implement partnerships under Senate Bill (SB) 1882, 85th Texas Legislature, 2017, and share governance without being required to demonstrate experience or existing expertise on the part of that newly created entity.

Agency Response: The agency disagrees. The district may have members on the board of the operating partner if they are not a majority of that board. A district-developed nonprofit that manages a campus is a district-managed campus, which does not meet the criteria to receive financial or accountability benefits. The agency also clarifies that the requirement to demonstrate existing experience applies only to partnerships at campuses with an overall F rating.

Comment: RYHT questioned how the amendment applies to existing contracts and questioned the process for renewing accountability pauses.

Agency Response: The agency provides the following clarification. The agency will apply the standards outlined in §97.1075 when current contracts are modified or renewed. The process for renewing an accountability pause is outside of the scope of this rule proposal and will be addressed in a future rule proposal.

Comment: Texas American Federation of Teachers (Texas AFT) commented that the amendment provides incentives to charter operators while creating barriers for nonprofits. The commenter argued that nonprofits have been more successful at managing campuses than charter operators.

Agency Response: The agency disagrees. Requirements for open-enrollment charter schools exist outside of §97.1075. Charter schools that are approved by the state under TEC, Chapter 12, Subchapter D, must also meet high quality standards through a state vetting process.

Comment: Texas AFT suggested that the rule include provisions to ensure transparency to show that additional funds paid to districts are used in classrooms.

Agency Response: The agency disagrees. The amended rule requires much greater clarity about the funding structure of partnerships while ultimately leaving the decision on how to spend funds up to the district and partner, who know the needs and local context best. The performance contract is required to include academic performance targets, and the purpose of partnerships is to expand district capacity to generate improved student outcomes. The agency is also limited in its ability to collect data and cannot collect data, like the specific use of funds, without authorization under TEC, §7.060.

Comment: Public School Allies, Texas Public Policy Foundation, and Texas Public Charter Schools Association commented in support of the amendment to §97.1075, stating that the amendment helps to strengthen partnerships between districts and operators because it prevents confusion, provides clarification and transparency around funding structures, and clarifies the role of the operating partner and the partner's necessary authority.

Agency Response: The agency agrees. The purpose of the amendment is to provide clarity for both districts and operating partners to ensure that partnerships are built on a successful foundation.

Comment: Texas State Teachers Association commented that the amendment to §97.1075 makes the partnerships benefit approval process restrictive and has created a new system of TEA regulation. Similarly, RYHT commented that the amendments

in §97.1075 and §97.1079 are too restrictive for non-turnaround campuses and that institutions of higher education (IHEs) in particular should be subject to the less-demanding standards required of state-approved open-enrollment charter schools.

Agency Response: The agency disagrees. The amendment to §97.1075 provides clarity and predictability around the benefits approval process while ensuring partnerships that receive financial and accountability benefits meet a minimum standard of quality. Regarding the standards for state-approved open-enrollment charter schools and IHEs, open-enrollment charter schools approved by the state under TEC, Chapter 12, Subchapter D, are vetted and monitored specifically for running prekindergarten-Grade 12 campuses, whereas IHEs are accredited to manage postsecondary education. Therefore, districts need to vet the IHE's ability to manage a prekindergarten-Grade 12 campus.

Comment: RYHT commented that the amendment to §97.1075(c)(1) may cause significant operational difficulty for local charter schools and their district partners and could create conflicts over district employees providing food service, maintenance, or special education services. RYHT further stated that the existing provision that requires operating partners only have oversight of instructional staff serving "a majority of the students" is sufficient.

Agency Response: The agency disagrees. The amended rule text around staffing authorities protects the structure of the partnership, giving the partner the necessary authority to successfully operate the campus, and thus prevents conflicts between the district and partner regarding authority. If the partner elects to assign district staff to the campus or buy back services from the district that include district staff, the terms of these services are outlined in the performance contract.

Comment: Public School Allies suggested that the staffing authorities in this section should require that the operating partner employ all staff to fully empower the partner to manage the campus. City Education Partners made a similar suggestion to encourage all employees of the campus to become staff of the operating partner.

Agency Response: The agency disagrees. The operating partner must have authority over staffing decisions at the campus, and the operating partner is required to employ reasonable staff to manage the campus or campuses. However, both partners and districts have various reasons for choosing to have the district as the employer of staff that is assigned to the campus. The agency gives districts and partners the flexibility to make these decisions locally.

Comment: Schulman, Lopez, Hoffer, and Adelstein, LLP (SLHA, LLP) commented in support of the staffing authority clarifications in the amendment, stating that the changes support the aims of SB 1882. SLHA, LLP further commented that ensuring operating partner authority over campus budget and operations empowers the operator to meet the performance targets agreed to in the performance contract with the district.

Agency Response: The agency agrees. The amendment to §97.1075 is intended to strengthen partnerships by providing greater clarity to both districts and operating partners. Districts partner with operators to improve student outcomes, and by clarifying these authorities, districts and operators can more successfully and clearly work in partnership to achieve those improved outcomes.

Comment: Midland Independent School District (ISD), District Charter Alliance (DCA), and San Antonio ISD commented on §97.1075(c)(1)(D), which states that if the operating partner rescinds the assignment of any district employee or district contract, the district must grant the request with 15 working days. The commenters requested that the rule also require the operating partner to provide the district with documentation and rationale for the request to rescind the assignment. RYHT questioned what the district is required to do with these staff members, including what funding adjustments should occur. TSTA also raised a concern that staff movement would create a fiscal impact for the district and would be disruptive to students. Public School Allies suggested that the rule further specify that the district becomes responsible for the salary and benefits of the district employee or district contractor once the operating partner has rescinded the employee's assignment.

Agency Response: The agency disagrees. Districts and operating partners negotiate a performance contract that outlines the structure of the partnerships. The terms for what steps should be taken before and after the request and what documentation would be required prior to the rescission of a district employee are local decisions that can and should be outlined in the performance contract. Similarly, the determination of whether the disruption created by re-assigning staff outweighs the benefit of removing a less-effective staff member is a local decision.

Comment: Relating to the timing of the operating partner's request to rescind a district employee or district contractor's assignment from the partner-managed campus, RYHT suggested that the rule allow an agreement to require notice before the district's non-renewal deadline of instructional staff that would not be retained at the campus for the following school year.

Agency Response: The agency disagrees. Districts and operating partners outline the specific actions and documentation required for these situations in performance contracts. The decision to terminate a district employee contract lies solely with the district and would follow the district's established procedures.

Comment: ATPE commented that if an operating partner requests to rescind a district employee or district contractor's assignment from the partner-managed campus, a district may be unable to meet the burden of finding a new position for the district employee or contractor within the 15-day window in the middle of the school year, which could result in the district terminating the employee's contract. Beaumont ISD requested that the district have more time to place the employee whose assignment was rescinded from the partner campus, stating that 15 working days is unrealistic.

Agency Response: The agency agrees that districts would benefit from additional time to grant a request for the rescission of a district employee. Section 97.1075(c)(1)(D) has been modified at adoption to require the district to grant the request within 20 working days rather than 15 to allow the district sufficient time to process the request. For districts to successfully engage in partnerships, it is critical that the district create internal systems, including human resources policies and organizational structures, that are efficient and support the execution of the partnership.

Comment: Texas AFT and ATPE commented that the rule limits partnership between the district and the operating partner because of the sole authorities given to the partner. Texas AFT commented that the staffing and other authorities conferred to operating partners, particularly the requirement that the operating partner have sole authority over these areas, leaves parents

and the public out of critical decisions around the frequency of testing, curriculum, and instructional delivery.

Agency Response: The agency disagrees. Although the partner has sole authority to manage the campus, the decision to contract to partner to operate the campus is made by the district, and the district and partner mutually agree upon terms of the performance contract. The partner's management of the campus is done in alignment with the district's broader strategy for improving student outcomes. The requirement that the operating partner have sole authority over staffing, budget, academic model, and other related items on the campus ensures that the campus is truly managed by the partner. It does not prevent or preclude operating partners or school districts from engaging community stakeholders in campus-level decisions in either the decision to partner or in the ongoing campus decisions while the campus is in operation.

Comment: San Antonio ISD suggested that the rule or guidance acknowledge the collaboration that must occur between the district and the operating partners in determining funding allotments.

Agency Response: The agency agrees that adding the suggested information in guidance documents would be beneficial. District and partner collaboration is critical when negotiating the funding structure of the partnership, and the agency will include this in both guidance and training documents.

Comment: RYHT; Texas AFT; SLHA, LLP; ATPE; and TSTA raised concerns that the language proposed to be added to subsection (d), which states that the performance contract may not be contingent on any rating issued by TEA, is unclear. Specifically, the commenters were concerned that the language in this section would override the performance targets set in the performance contract, which, per subsection (d)(2), must be included in the performance contract. TSTA was concerned that the district could be subject to campus closure or the installation of a board of managers due to the poor performance of a partner.

Agency Response: The agency agrees that this provision, as proposed in §97.1075(d), was unclear. Subsection (d)(5) outlines the public hearing requirement for terminating performance contracts, and local board policies will outline the process for the revocation or non-renewal of a contract. Including the provision that the performance contract may not be contingent on a TEA rating created confusion; the performance contract outlines performance targets and the specific and material consequences for failing to meet these targets. Therefore, this statement has been removed from §97.1075(d) at adoption and added as new 19 TAC §97.1079(e)(5)(G) to clarify that the agency will not approve benefits for partnerships where the performance contract is contingent on the approval of benefits or on a rating the campus receives based on the performance prior to the operating partner managing the campus.

Comment: DCA suggested that the commissioner further exercise rulemaking authority under both TEC, §11.174 and §12.0522, to clarify the provisions to which district charters are subject under TEC, Chapter 12, Subchapter D.

Agency Response: This comment is outside the scope of the current proposal.

Comment: DCA commented that the requirement that the performance contract include a provision requiring the operating partner to complete an annual independent financial report does not conform to statutory authority under TEC, §12.059, which requires that the charter granted to a campus must "describe the manner in which an annual audit of financial and programmatic operations of the campus or program is to be conducted." The commenter suggested that the agency limit the scope of the financial audit to the operation of the campus rather than to the entire partner organization.

Agency Response: The agency agrees. While TEC, §12.059, states that the charter must include the manner in which an annual audit of financial and programmatic operations of the campus or program is to be conducted, this does not prevent the performance contract between the district and the operating partner from including the requirement of an independent financial audit. At adoption, §97.1075(d)(3)(A) has been clarified to specify that the audit of the partner organization is limited to the part of the organization that contracts to partner to operate. For example, a university would not be required to complete an audit of the entire university but only of the department that contracted to partner to operate the campus.

Comment: DCA, Public School Allies, and Texas Public Charter Schools Association questioned how the agency defines "reasonable" in §97.1075(d)(7)(A) and what specific items are included in the campus budget referenced in §97.1075(d)(7)(C). PSA commented in support of the addition of §97.1075(d)(7), stating that it accomplished to goal of ensuring that operating partners have access to the resources necessary to successfully operate the campus.

Agency Response: The agency agrees that clarification relating to campus budgets is needed. To further reinforce that the campus budget includes all the funds due to the campus, §97.1075(d)(7)(C) has been amended at adoption to include the comprehensive budget language in §97.1075(d)(7)(A). The agency disagrees with defining "reasonable" in rule but will provide guidance to support district and partners in determining what constitutes reasonable funding. Districts and partners have autonomy in making financial decisions, and the rule provides a minimum requirement that operating partners receive necessary funding.

Comment: RYHT suggested that §97.1075(d)(8) be expanded to specify that a percentage of the campus budget, not just the district budget, can be included in the performance contract as a specific cost of a service that the operating partner is purchasing from the district.

Agency Response: The agency disagrees. If an operating partner is buying back services from the district and the district is pricing that service as a percentage, pricing it as a portion of the district budget ensures that the price of the service is equitable. Section 97.1075(d)(8) allows districts to price services per campus as well.

Comment: San Antonio ISD suggested a revision to §97.1075(d)(8) to allow the partner and district to agree on a bundle of services at a specific price or percentage of funding.

Agency Response: The agency disagrees with making the suggested change in the rule. The rule text does not prohibit the bundling of services. The allowance of the bundling of services in a performance contract will be clarified in guidance from the agency.

Comment: RYHT suggested adding a statement to §97.1075(e) to indicate that operating partner capacity can be demonstrated by the capacity of multiple partners and that partners should be able to draw on each other's resources through a corporate

structure. Furthermore, the commenter stated that the district could be one of these partners or could participate in the governance of the charter.

Agency Response: The agency disagrees. The rule does not specifically prevent the arrangement suggested by the commenter as long as a majority of the nonprofit's board is independent of the district and does not include district board members.

Comment: SLHA, LLP requested that the agency provide a more specific definition of operating partner capacity.

Agency Response: The agency provides the following clarification. The minimum qualifications for operating partner capacity are defined in 19 TAC §97.1079, and it is the responsibility of the district to vet the capacity of the operating partner.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §11.174, which provides benefits to a campus whose district contracts with a TEC, Chapter 12, Subchapter C or D charter school to operate the campus; and TEC, §48.252, which entitles districts to receive increased funding for students at campuses contracting with TEC, Chapter 12, Subchapter C or D charter operators.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.174 and §48.252.

§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.

(a) Applicability. This section applies only to an independent school district that intends to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174 and §48.252.

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Operating partner--Either a state-authorized open-enrollment charter school or an eligible entity as defined by TEC, §12.101(a).

(2) Open-enrollment charter holder--This term has the meaning assigned in TEC, §12.1012(1).

(3) Governing body of a charter holder--This term has the meaning assigned in TEC, §12.1012(2).

(4) Governing body of a charter school--This term has the meaning assigned in TEC, §12.1012(3).

(5) Contract to partner to operate a campus--This term means the partner must operate the campus in accordance with subsection (c) of this section under a performance contract as outlined in subsection (d) of this section.

(6) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(c) Conferred authority. In order to qualify as operating a district campus under TEC, §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner.

(1) Staffing authorities.

(A) The operating partner must have authority to employ and manage the campus chief operating officer, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

(B) The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

(C) The operating partner must have sole authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus.

(D) The operating partner must have initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the campus. If the operating partner rescinds the assignment of any district employee or district contractor, the district must grant the request within 20 working days.

(E) The operating partner must directly manage the campus principal or chief operating officer, including having the sole responsibility for evaluating the performance of the campus principal or chief operating officer.

(2) Other authorities. The operating partner must have:

(A) initial, final, and sole authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus;

(B) initial, final, and sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students, and other statutorily defined populations;

(C) initial, final, and sole authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;

(D) initial, final, and sole authority to select and determine the use of any and all assessments to be used on the campus that are not required by the state of Texas;

(E) initial, final, and sole authority to determine how the entire campus budget, including any and all federal and state grant funds due the campus, is allocated. The governing body of the operating partner shall approve the campus budget in a meeting held under the Texas Open Meetings Act, Texas Government Code, Chapter 551. Notwithstanding such budget authority, the operating partner's expenditures must comply with applicable restrictions on the use of state and federal funds; and

(F) initial, final, and sole authority to implement and adjust the campus budget.

(d) Performance contract. To contract to partner to operate under TEC, §11.174, the independent school district's board of trustees must grant the operating partner a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, §12.0531. This performance contract must include, at a minimum, the following provisions:

(1) a clear and unambiguous description of enhanced authorities as outlined in subsection (c) of this section;

(2) academic performance expectations and goals, which shall include, but are not limited to:

(A) for campuses that are paired for accountability purposes, specific annual targets for improved student academic performance;

(B) for campuses issued an accountability rating under TEC, §39.054, a specific annual target for the overall campus academic rating; and

(C) specific consequences in the event that the operating party does not meet the academic performance expectations and goals described in the performance contract;

(3) annual financial performance expectations and goals, which shall include, but are not limited to:

(A) the completion of an annual independent financial report, including an audit, of the operating partner organization, limited to matters directly related to the management or operation of the campus or campuses;

(B) receipt of an unqualified audit opinion, in connection with the annual financial report required in subparagraph (A) of this paragraph; and

(C) specific consequences in the event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract;

(4) a description of the campus enrollment and expulsion policies that must comply with TEC, §11.174(i);

(5) a contract term of up to 10 years as required by TEC, §12.0531, with a provision(s) specifying:

(A) a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and

(B) a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract;

(6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;

(7) a section that describes the funding structure of the partnership. This section must specify:

(A) a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year;

(B) the total budget for the first year of operation; and

(C) the authority of the partner over the entire campus budget, which includes all federal, state, and local funds due the campus as described in subparagraph (A) of this paragraph;

(8) service-level agreements that list the resources and services the operating partner intends to purchase from the district and the specific costs of such services by pupil, square foot, campus, or the percentage of the total district budget for the specific resource or service. The resources and services may include:

(A) facility use and related matters;

(B) transportation;

(C) specific education program services, such as providing special education services; and

(D) access to other resources and services as agreed between the parties;

(9) a section that describes the educational plan or academic model that the operating partner will implement on the campus or campuses;

(10) an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by TEC, §11.174(c), unless the district is partnering with an entity described in TEC, §11.174(a)(2); and

(11) a description of the specific and material consequence(s) in the instance that either the district or the operating partner breaches the contract.

(e) Capacity to operate. In order to qualify as an eligible partnership under TEC, §11.174, the district must demonstrate that the operating partner has the necessary capacity to successfully manage campuses.

(f) Contract notification to the TEA. In order to qualify as an eligible partnership under TEC, §11.174, notification of contracts related to TEC, §11.174(a)(1), must meet the deadlines published by the TEA staff.

(g) Contract amendments. Eligible partnerships under TEC, §11.174, must notify the TEA of amendments to performance contracts related to TEC, §11.174(a)(1) and (2), within 30 calendar days of the amendment of the contract.

(h) Performance ratings. The commissioner of education shall continue to evaluate and assign overall and domain performance ratings under TEC, §39.054, to the campus.

(i) Monitoring. In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership.

(j) Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §48.252, the district must continuously meet the requirements in subsections (c)-(i) of this section.

(k) Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.

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 March 11, 2020.

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19 TAC §97.1079

The Texas Education Agency (TEA) adopts an amendment to §97.1079, concerning determination processes and criteria for eligible entity approval under Texas Education Code (TEC), §11.174. The amendment is adopted with changes to the proposed text as published in the December 27, 2019 issue of the *Texas Register* (44 TexReg 8195) and will be republished. The adopted amendment modifies the rule to provide clarifications to existing statutory provisions.

REASONED JUSTIFICATION: Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2).

New §97.1079(e) is added, using existing rule language, to address application requirements. Throughout the new subsection, the term "eligibility approval request form" is changed to "application package" to align with what districts actually submit for approval. Subsection (e)(1) is amended to specify the items that may be included in an application package. The new items include an application form, the timeline for submission of completed forms, and requirements that must be met in order for the application to be approved, which include mandatory training sessions. These training sessions ensure that districts and operating partners are aware of the requirements necessary to submit a successful application package.

New subsection (e)(5) is added to allow TEA to remove from consideration applications that are not timely submitted, that are from districts that did not attend mandatory trainings or complete a letter of intent, that are plagiarized, or that include an operating partner that did not attend mandatory training sessions or that does not meet basic staffing requirements. Subsection (e)(5)(A) is updated at adoption to correct a typo. The board and staffing requirements that the operating partner must meet are clarified at adoption in subsection (e)(5)(F) in response to public comment. This subsection ensures that districts are prepared to submit successful application packages and that districts have approved operating partners that have the capacity to manage campuses. During the public comment period for the proposed amendment to §97.1079, the agency received comments on another rule proposal (19 TAC §97.1075, Contracting to Partner to Operate a Campus under Texas Education Code, §11.174) that included a provision that contracts not be contingent on any performance rating issues by TEA. This created confusion, as commenters were unsure if that meant that districts could not uphold the performance targets agreed to in the performance contract. To clarify this, and to coincide with changes made to 19 TAC §97.1075 at adoption, new subsection (e)(5)(G) is added at adoption to indicate that the agency will remove from review any applications that include contracts that are contingent on the approval of benefits under Senate Bill (SB) 1882, 85th Texas Legislature, 2017, or contingent on a rating the campus received that is based on the campus's performance prior to the operating partner managing the campus.

Existing rule language relating to the review panel is moved to new subsection (e)(6). The language is amended to clarify that the review panel will only review application packages that are complete and satisfy the requirements in subsection (e)(5). The rule is also amended to allow the commissioner to appoint TEA staff to the review panel in order to allow expeditious review of the application packages.

Subsection (e)(7) is amended to clarify the agency review process by specifying that the agency may request additional information and/or interviews with districts or operating partners. This allows staff to have more information before approving an application package.

New subsection (e)(8) is added using existing rule language that states that no recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

Renumbered subsection (e)(9) is amended to outline what a district and/or operating partner must demonstrate with the application package submission. Subparagraph (A) specifies that applicants must submit the financial information for the partnership to ensure that the district and partner have negotiated these terms prior to implementing the partnership and that the necessary financial resources are available. In response to public comment on the proposed amendment to 19 TAC §97.1075, language in subparagraph (A) is updated at adoption to conform to 19 TAC §97.1075(d)(7) to clarify that the budget includes all federal, state, and local funds due the campus. New subparagraph (B) specifies the criteria for application packages relating to TEC, Chapter 12, Subchapters D and E (state-authorized) charter schools. Because these organizations have already been approved by the state, this subparagraph stipulates that applications need to include the district's authorizing policy and the performance contract between the operator and the district. The new language specifies that TEA will implement an authorizing policy approval process for districts not using the TEA model policy. The approval process will take place prior to the benefits application period starting with the application cycle in the 2020-2021 school year (for benefits beginning in the 2021-2022 school year). New subparagraph (C) specifies the requirements for all entities other than entities that hold a charter granted under TEC, Chapter 12, Subchapters D and E. The following new or amended requirements apply to those entities.

New subsection (e)(9)(C)(i) is added to require evidence of the district's capacity to authorize and oversee charter campuses granted under TEC, Chapter 12, Subchapter C, including the employment of a specific person or specific people responsible for overseeing the authorizing and monitoring of in-district charters and evidence that, beginning in the 2021-2022 school year, the district employee has completed a TEA training program within one year of approval of benefits. This language is updated at adoption to remove the conflicting language that the training must be completed prior to the evaluation of the partnership and within a year of benefits approval.

Renumbered subsection (e)(9)(C)(ii) is amended to specify the requirements for the district's high-quality authorizing process to include the adoption of the TEA model policy, model charter application, and scoring rubric or a similar policy, application, and scoring rubric approved by TEA prior to or as part of the application process. New language specifies that TEA will implement an authorizing policy approval process for districts not using the TEA model policy. The approval process will take place prior to the benefits application period starting with the application cy-

cle in the 2020-2021 school year (for benefits beginning in the 2021-2022 school year). Language is also amended to require evidence that the district required the operating partner to complete the application without the assistance of the district or the district's vendor, that the district employed a review panel to identify the strengths and weaknesses of the application, that the district reviewed any prior operating and academic performance history of the proposed operator, and that the district conducted a capacity interview.

New subsection (e)(9)(C)(iii) is added to require evidence of the proposed operating partner's capacity to include evidence that the board includes at least three members who served prior to the submission of the application to the district, that the operating partner has sufficient staff dedicated to the management of the campus or campuses, that the operating partner's staff has experience managing schools or programs, that the operating partner has reasonable funding to manage the campus or campuses, and that the governing board of the operating partner will participate in board governance training within a year of the benefits application approval.

New subsection (e)(9)(C)(iv) is added to require evidence of a clear and coherent academic model or program to be implemented by the operating partner, including evidence that the operating partner can clearly describe a consistent school vision for the campus or all campuses, including its culture, curriculum, assessment program, instructional strategies, talent recruitment and management strategies, and professional development activities or programs; evidence that the strategies will be effective for the student population to be served; and evidence that the operating partner can clearly describe the management routines and practices that will be implemented.

Renumbered subsection (e)(9)(C)(vi) is amended to require an assurance that the governing board of the operating partner will participate in board governance training.

New subsection (e)(9)(C)(vii) is added to require the district to provide an assurance that a list of board members and their backgrounds will be provided upon approval and annually thereafter.

Relettered subsection (e)(9)(D) is amended to ensure that operating partners at campuses that have received unacceptable performance ratings have the capacity to manage a turnaround campus. Specifically, the rule would require that, for partnership benefits that begin in the 2020-2021 or 2021-2022 school year, operators have staff with three years of experience managing turnaround campuses and that, for partnership benefits that begin in the 2022-2023 school year, operators have existed for at least three years, have managed multiple campuses, and have a track record of improving student outcomes. In response to public comment, the phase-in period for this provision (allowing operators with staff with three years of experience to manage turnaround campuses rather than requiring the entire organization to have existed for three years) was increased by a year in clauses (i) and (ii) at adoption.

New subsection (e)(9)(E) is added to address monitoring and clarify that TEA staff will collect information and conduct site visits as needed to ensure that the partnership maintains eligibility for benefits.

New subsection (e)(9)(F) is added to ensure that districts and operating partners maintain the standards described in subsection (e) to maintain the benefits of the partnership.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 27, 2019, and ended January 27, 2020. A public hearing on the proposal was held at 8:30 a.m. on January 10, 2020, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of public comments received and the corresponding agency responses, including testimony presented during the public hearing.

Comment: Raise Your Hand Texas (RYHT) commented that the rule assumes that the district contracts the operation of the campus and then releases responsibility of the campus and outcomes.

Agency Response: The agency disagrees. The negotiation and ongoing monitoring of the performance contract ensures that the district and operator are working in partnership to achieve mutually agreed-upon goals. To this end, §97.1079 also requires the district employ at least one staff member fully dedicated to oversight of these partnerships. Districts remain ultimately responsible for campus performance under the agency's academic accountability system.

Comment: RYHT suggested that the rule should support more active district participation in the governance of the campus.

Agency Response: The agency disagrees. District staff can make up a minority of board members to the partner organization, as long as these partner board members are not also members of the district's board, and thus take an active role in the governance of the campus.

Comment: RYHT suggested that districts be allowed to create a new nonprofit corporation to implement partnerships under Senate Bill (SB) 1882, 85th Texas Legislature, 2017, and share governance without being required to demonstrate experience or existing expertise on the part of that newly created entity.

Agency Response: The agency disagrees. The scenario described by the commenter would be a district-managed campus, which does not build the capacity of the district to serve its students and, therefore, does not meet the criteria to receive financial or accountability benefits. The agency also clarifies that the requirement to demonstrate existing experience applies only to partnerships at campuses with an overall F rating.

Comment: RYHT questioned how the amendment applies to existing contracts and questioned the process for renewing accountability pauses.

Agency Response: The agency provides the following clarification. The agency will apply the standards outlined in §97.1079 when current contracts are modified or renewed. The process for renewing an accountability pause is outside of the scope of this rule proposal and will be addressed in a future rule proposal.

Comment: Texas American Federation of Teachers (Texas AFT) commented that the amendment provides incentives to charter operators while creating barriers for nonprofits. The commenter argued that nonprofits have been more successful at managing campuses than charter operators.

Agency Response: The agency disagrees. Requirements for open-enrollment charter schools exist outside of §97.1079. Charter schools that are approved by the state under TEC, Chapter 12, Subchapter D, must also meet high quality standards through a state vetting process.

Comment: Texas AFT suggested that the rule include provisions to ensure transparency to show that additional funds paid to districts are used in classrooms.

Agency Response: The agency disagrees. The amended rule requires much greater clarity about the funding structure of partnerships while ultimately leaving the decision on how to spend funds up to the district and partner, who know the needs and local context best. The performance contract is required to include academic performance targets, and the purpose of partnerships is to expand district capacity to generate improved student outcomes. The agency is also limited in its ability to collect data and cannot collect data, like the specific use of funds, without authorization under TEC, §7.060.

Comment: Texas State Teachers Association commented that the amendment to §97.1079 makes the partnerships benefit approval process restrictive and has created a new system of TEA regulation. Similarly, RYHT commented that the amendments in §97.1079 and §97.1075 are too restrictive for non-turnaround campuses and that institutions of higher education (IHEs) in particular should be subject to the less-demanding standards required of state-approved open-enrollment charter schools.

Agency Response: The agency disagrees. The amendment to §97.1079 provides clarity and predictability around the benefits approval process while ensuring partnerships that receive financial and accountability benefits meet a minimum standard of quality. Regarding the standards for state-approved open-enrollment charter schools and IHEs, open-enrollment charter schools approved by the state under TEC, Chapter 12, Subchapter D, are vetted and monitored specifically for running prekindergarten-Grade 12 campuses, whereas IHEs are accredited to manage postsecondary education. Therefore, districts need to vet the IHE's ability to manage a prekindergarten-Grade 12 campus.

Comment: RYHT commented that §97.1079(e)(1)(C) allows the application to set the approval standard, which prevents the public from receiving notice and making comment on the standards for approval of benefits. The commenter stated that this prevents partners and districts from knowing if they are developing partnerships that will be approved for benefits while they are in planning.

Agency Response: The agency disagrees. The requirements referred to in §97.1079(e)(1)(C) refer to the items that must be provided to the agency and do not contain the approval standards.

Comment: District Charter Alliance (DCA) recommended requiring the agency to allow virtual participation in required trainings and to identify standards for waiving training requirements under §97.1079(e)(1)(C).

Agency Response: The agency disagrees. The rule does not prevent the agency from allowing virtual participation in trainings, and the trainings referenced in this section are currently only offered virtually. In addition, the agency disagrees with creating a waiver process for these trainings because they ensure that districts and partners are aware of the requirements that must be met to have a successful application package, and waiving the requirement would put districts and/or partners at a disadvantage.

Comment: DCA recommended that §97.1079(e)(5)(F), which requires that the operating partner have at least one full-time equivalent (FTE) dedicated to campus management and a governing board at the time of application for benefits, be modified to allow evidence of contractual obligation of an FTE to begin employment rather than requiring the staff member be employed by the application for benefits deadline. City Education Partners suggested that the agency change the requirement for the operating partner to have full-time staff by March (the deadline for the current application cycle) to a full-time staff person by June so that hiring can be conducted based on a school calendar year.

Agency Response: The agency agrees in part and disagrees in part. Planning to open a school and beginning operating a campus is time-consuming and requires dedicated staff. Nothing prevents the district from funding the operating partner to support this position prior to the receipt of benefits. However, the agency has updated §97.1079(e)(5)(F) at adoption to reflect that if the FTE is a current district employee under contractual obligation with the partner governing board to manage the campus and the district can provide evidence that the FTE is solely dedicated to planning to launch the campus, this requirement is fulfilled.

Comment: Public School Allies commented in favor of §97.1079(e)(5)(F), which requires that the operating partner have at least one FTE dedicated to campus management and a governing board at the time of application for benefits, stating that this provision upholds the legislative intent of SB 1882 by ensuring partnership campuses maintain independent governance.

Agency Response: The agency agrees. This provision ensures independent governance and ensures that there is staff dedicated to the critical planning work necessary for opening a school. In response to other comments, §97.1079(e)(5)(F) has been updated at adoption to clarify that the governing board must meet the requirements for independent that are outlined in (e)(9)(C)(vi) of this section.

Comment: Public School Allies and City Education Partners asked the agency to define "reasonable" in §97.1079(e)(9)(A)(i).

Agency Response: The agency provides the following clarification. The agency will provide guidance to support districts and partners in determining what constitutes reasonable funding. The variety of contexts across the state require that districts and partners have autonomy in making financial decisions, and the rule provides a minimum requirement that operating partners receive necessary funding while still providing flexibility to districts.

Comment: Texas AFT commented that provisions in §97.1079(e)(9)(C) place more requirements on districts overseeing district charter schools and that there is no requirement for district oversight of open-enrollment charter schools. The commenter further stated that nonprofit operators have a better track record than open-enrollment charter schools and that Texas charter operators "commonly see scandals and even criminal charges."

Agency Response: The agency disagrees. The provisions in §97.1079(e)(9)(C) ensure that the district has staff dedicated to the work of authorizing in-district charter schools. TEC, Chapter 12, Subchapters D and E charter schools are authorized by the state, so the district does not need to have staff dedicated to authorizing those types of operators. All proposed operating partners must enter into a performance contract that the district oversees, as stated in §97.1079(e)(9)(B)(ii) and in 19 TAC §97.1075.

Comment: DCA recommended that the rule (1) address ambiguity in the procedural requirements applicable to partner solic-

itations; and (2) do so in a manner that maximizes the flexibility of the partner.

Agency Response: The agency disagrees that the recommended language should be included in the rule. Districts may choose their own authorizing policies and practices. Through training and guidance resources, the agency provides districts information on best practices in authorizing.

Comment: City Education Partners recommended that the rule prevent districts from requiring draft submissions from potential partners prior to final district application deadlines and that the rule encourage districts to have application review panels that include external community members.

Agency Response: The agency disagrees, as the application process is a decision made locally. However, in guidance, the agency will encourage districts to engage community members in the partner application review process.

Comment: San Antonio ISD commented that the provision in §97.1079(e)(9)(c)(ii)(III)(-a-), which requires that the partner complete the application to the district without assistance from the district or district assigned vendor, removes the school's voice from the application process.

Agency Response: The agency disagrees. Because the partner is given sole authority to manage the campus, the application needs to be a strong demonstration of the operating partner's capacity to successfully manage this authority. If the partner is not able to independently complete the application without district assistance, it calls into question whether the partner has the capacity to independently manage the campus without district assistance. This item does not prevent the district and partner from discussing the needs of the district or campus or collaborating generally, and it does not preclude the district from supporting them to develop their model; it requires that the partner be able to independently articulate the model they will be responsible for implementing.

Comment: Public School Allies suggested that the agency clarify in rule that members of the operating partner's governing board cannot be district board members or employees of the district partner to ensure the independence of the partner governing board.

Agency Response: The agency provides the following clarification. Section 97.1079(e)(9)(C)(vi) includes provisions that prevent district board members, the superintendent, and district staff responsible for granting the contract to operate the campus from being partner board members. While other district staff are not prohibited from being members of the partner organization's board, they cannot make up a majority of that board and, therefore, cannot control the board.

Comment: Texas Public Policy Foundation and Public School Allies commented in support of the provisions in §97.1079(e)(9)(D), which require operating partners managing turnaround campuses to have at least three years of experience successfully managing campuses. The commenters requested that the agency hold firm on these provisions as they ensure that operating partners have the necessary capacity to successfully manage schools with greater needs.

Agency Response: The agency agrees. Managing campuses is difficult; managing a failing campus to academic success is even more so. Experienced school leaders and organizations are better equipped to meet this challenge.

Comment: A principal commented that §97.1079(e)(9)(D), which requires operating partners managing turnaround campuses to have at least three years of experience successfully managing campuses, prevents talented leaders from leading a network to operate turnaround campuses. The Association of Texas Professional Educators (ATPE) commented that the requirement prohibits districts from forming new entities in collaboration with an outside group to work with the district.

Agency Response: The agency disagrees. The requirement ensures that the organization's leader, and eventually the organization itself, has the capacity and track record needed to serve the highest needs campuses in the state, especially since these campuses receive a pause on accountability interventions. The agency also provides the following clarification. Districts may still partner with new organizations at campuses that have an acceptable performance rating.

Comment: Relating to §97.1079(e)(9)(D), which requires operating partners managing turnaround campuses to have at least three years of experience successfully managing campuses, City Education Partners suggested that the agency also allow leaders that have participated in a full-time incubation program to apply to receive benefits for managing turnaround campuses. DCA and MAYA Consulting commented that the agency should maintain the requirement for individual staff experience rather than experience of the organization as a whole, and DCA further suggested that the agency could provide a waiver process for this requirement. Texas Public Charter Schools Association suggested that the agency include a requirement that the operating partner have a three-year track record of success at the campuses they manage.

Agency Response: The agency agrees in part and disagrees in part. While participation in an incubation program itself does not meet the requirements in §97.1079(e)(9)(D), the phase-in proposal in §97.1079(e)(9)(D)(i) allows leaders currently in incubation programs time to gain the necessary experience to manage campuses. The agency will still apply the experience requirement for organizations; however, the agency has updated §97.1079(e)(9)(D)(i) at adoption to lengthen the phase-in period. The requirement that the operating partner have a three-year track record of success at the campuses they manage is already included in the rule.

Comment: DCA requested that the agency include a provision to minimize monitoring information requests and that requires the agency to collaborate with partners in setting timelines for information requests on on-site visits.

Agency Response: The agency disagrees that the suggested provision is needed in rule. Information requests from the agency to the district are vetted through an internal agency board (the Data Governance Board) to ensure the requests are not overly burdensome or duplicative.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §11.174, which provides benefits to a campus whose district contracts with a TEC, Chapter 12, Subchapter C or D charter school to operate the campus; and TEC, §48.252, which entitles districts to receive increased funding for students at campuses contracting with TEC, Chapter 12, Subchapter C or D charter operators.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.174 and §48.252.

§97.1079. Determination Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174.

(a) Applicability. This section applies only to independent school districts that intend to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174(a)(2).

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Eligible entity--This term has the meaning assigned in TEC, §12.101(a).

(2) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(3) Applicant--This term refers to an independent school district seeking approval to receive benefits for an eligible entity to contract to partner to operate a campus.

(4) Proposed operating partner--This term refers to the eligible entity seeking approval in coordination with an independent school district to contract to partner to operate a campus.

(c) Institutions of higher education. This subsection applies to entities meeting the definition of an institution of higher education as described in TEC, §61.003.

(1) For applicants seeking eligibility approval of an institution of higher education, which has been granted a charter in accordance with TEC, Chapter 12, Subchapter E, as the proposed operating partner, the commissioner of education will treat the institution of higher education as an open-enrollment charter school under TEC, §11.174(a)(1).

(2) The commissioner may approve an eligibility approval request under this section if the commissioner determines that the approval of the eligibility approval request will improve student outcomes at the campus.

(d) Private or independent institutions of higher education that are not described in subsection (c) of this section, non-profits, and governmental entities. This subsection applies to entities meeting the definitions described in TEC, §12.101(a)(2), (3), and (4).

(e) Application requirements.

(1) Prior to each eligibility approval cycle, the commissioner shall approve an application package for submission by applicants seeking eligibility approval as specified in TEC, §11.174. The application package may contain, but is not limited to, any of the following:

(A) an application form;

(B) the timeline for submission of completed forms;

(C) requirements, including mandatory training sessions for districts and proposed operating partners, that must be met in order for applications to be approved;

(D) scoring criteria and procedures for use by the review panel selected under paragraph (6) of this subsection; and

(E) eligibility approval criteria, including the minimum score necessary for approval.

(2) The Texas Education Agency (TEA) shall review application packages submitted under this section. If the TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §11.174, the TEA shall notify the applicant and allow ten business days for the applicant to submit any missing or explanatory documents.

(A) If, after giving the applicant the opportunity to provide supplementary documents, the TEA determines that the eligibility approval request remains incomplete and/or the eligibility requirements of TEC, §11.174, have not been met, the eligibility approval request will be denied.

(B) If the documents are not timely submitted, the TEA shall remove the eligibility approval request without further processing. The TEA shall establish procedures and schedules for returning eligibility approval requests without further processing.

(C) Failure of the TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(D) A decision made by the TEA to deny, remove, or return an eligibility approval request is a final administrative decision of the TEA and may not be appealed under TEC, §7.057.

(3) Upon written notice to the TEA, an applicant may withdraw an application package.

(4) All parts of the district's application package are releasable to the public under the Texas Public Information Act, Texas Government Code, Chapter 552, and will be posted to the TEA website. Therefore, the following must be excluded or redacted from an application package submission:

(A) personal email addresses;

(B) proprietary material;

(C) copyrighted material;

(D) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the partnership school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(E) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(5) TEA will remove from review any application packages that:

(A) include plagiarism;

(B) are from districts that did not submit a letter of intent by the TEA published deadline;

(C) are from districts that did not participate in TEA required trainings;

(D) are from districts whose proposed operating partners did not attend TEA required trainings;

(E) are not submitted by the TEA published deadline;

(F) include an operating partner that does not have the following:

(i) a governing board with a minimum of three members. All partner governing board members must meet the requirements outlined in subsection (e)(9)(C)(vi) of this section; and

(ii) at least one full-time equivalent dedicated to the management of the campus or campuses. The full-time equivalent may be employed by the district only if they are under contractual obligation

with the operating partner board and the district can demonstrate that they are solely dedicated to planning the launch of the campus at the time of application for benefits; or

(G) include performance contracts that are contingent on approval of benefits under TEC, §11.174(a)(2), or a performance rating assigned to the campus based on performance that occurred prior to the operation of the campus by the operating partner.

(6) Applicants with complete application packages satisfying the requirements in paragraph (5) of this subsection will be reviewed by a review panel selected by the commissioner. The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of an application package review. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an applicant, including any current or prospective employee, agent, officer, or director of the eligible entity, an affiliated entity, or other party with an interest in the approval of the application package.

(7) TEA staff may interview applicants, may specify individuals from the district and proposed operating partner required to attend the interview, and may require the submission of additional information and documentation prior to an interview.

(8) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(9) The commissioner will consider criteria that include the following when determining whether to approve an applicant.

(A) The criteria described in this subparagraph apply to all campuses. Each applicant must submit financial information that demonstrates that the proposed operating partner:

(i) is provided with a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year;

(ii) has provided the total budget for the first year of operation of the campus to the district; and

(iii) has authority over the entire campus budget, which includes all of the federal, state, and local funds due the campus as described in clause (i) of this subparagraph.

(B) The criteria described in this subparagraph apply to application packages relating to partnerships between a district and an organization authorized under TEC, Chapter 12, Subchapters D and E.

(i) Each applicant must demonstrate evidence of the district's adoption and implementation of the TEA model authorizing policy or a similar policy approved by TEA.

(I) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model policy must have the local authorizing policy approved prior to the application review.

(II) TEA will release the authorizing policy approval timeline and process annually.

(III) TEA approval of local authorizing policies expires if the district changes the authorizing policy or if related sections of the Texas Administrative Code (TAC) or TEC change.

(ii) Each applicant must submit a performance contract that demonstrates that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174).

(C) The criteria described in this subparagraph apply to application packages relating to partnerships between a district and any other type of partner except for operating partners described in subparagraph (B) of this paragraph. Each applicant must demonstrate:

(i) evidence of district capacity to authorize and oversee district charter campuses authorized under TEC, Chapter 12, Subchapter C, which must include:

(I) at least one district employee, employed prior to the district evaluation of the partnership, and fully dedicated to overseeing the authorizing and ongoing monitoring of in-district charter schools; and

(II) for benefits that begin in the 2021-2022 school year, evidence that the district employee has completed a TEA training program on authorizing and partnerships no later than one year from the date of benefits approval;

(ii) evidence of the district's adoption and implementation of a high-quality district charter authorizing process as required by TEC, §12.058, which must include the following:

(I) the district's adoption and implementation of the TEA model authorizing policy or a similar policy approved by TEA prior to or as part of the application review. The following provisions apply.

(-a-) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model policy must have the local authorizing policy approved prior to the application review.

(-b-) TEA will release the authorizing policy approval timeline and process annually.

(-c-) TEA approval of local authorizing policies expires if the district changes the authorizing policy or if related sections of the TAC or TEC change;

(II) evidence of the district's adoption and implementation of the TEA model campus charter application or similar application and scoring rubric or a similar application and scoring rubric approved by TEA. The following provisions apply.

(-a-) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model campus application and scoring rubric must have the local campus application approved prior to the application review.

(-b-) TEA will release the local campus application and scoring rubric approval timeline and process annually.

(-c-) TEA approval of a local campus application and scoring rubric expires if the district changes the authorizing policy or if related sections of the TAC or TEC change; and

(III) evidence that, at a minimum, the district:

(-a-) required the proposed operating partner to complete the application without assistance from the district or a district assigned vendor;

(-b-) employed a review panel to read the application from the operating partner and that the review panel identified strengths and weaknesses of the application;

(-c-) reviewed any operating and academic performance history of the proposed operator; and

(-d-) conducted a capacity interview with the board and proposed staff of the partner organization;

(iii) evidence of the capacity of the operating partner to manage the campus or campuses, including evidence that:

(I) the board of the operating partner includes at least three people and that their membership on the board pre-dates the submission of their application to the district;

(II) the operating partner has staff that will be fully dedicated to the management of the campus or campuses and that the level of staffing is reasonable given the number of campuses to be managed;

(III) the staff of the operating partner dedicated to the management of the campus or campuses has experience managing schools or academic programs;

(IV) the operating partner is provided with a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year; and

(V) the governing board of the operating partner will participate in board governance training provided by TEA or a vendor recommended by TEA within one year of approval of benefits;

(iv) evidence of a clear and coherent academic model or program to be implemented by the partner organization, including evidence that:

(I) the partner can clearly describe a consistent school vision for the campus or all campuses, including its culture, curriculum, assessment program, instructional strategies, talent recruitment and management strategies, and professional development activities or programs;

(II) the partner can clearly provide evidence that the aforementioned strategies and programs can be effective with the student population served in the campus or campuses; and

(III) the partner can clearly describe the management routines and practices to be implemented by the operating partner in managing the staff and academic programs as the campus or campuses;

(v) evidence that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title;

(vi) an assurance that the governing body of the operating partner shall remain independent of the independent school district. This may include the following:

(I) an assurance that the governing body of the operating partner is not and shall not be comprised of any members of the independent school district's board of trustees, the superintendent, or staff responsible for granting the contract to partner to operate or overseeing the performance contract;

(II) an assurance that the majority of the governing body of the operating partner is not and shall not be comprised of district staff;

(III) an assurance that no member of the governing body of the operating partner will be related within the first degree of affinity or consanguinity with any members of the independent school district's board of trustees, the superintendent, or staff responsible for granting the charter or contract to partner to operate or overseeing the performance contract;

(IV) an assurance that all members of the governing body of the operating partner have passed and will continually pass the district's conflict of interest checks;

(V) an assurance that the district has not appointed a majority of the members of the governing board of the operating partner; and

(vii) an assurance that the school district will provide a list of the board members of the governing body and a description of their respective backgrounds upon approval and annually thereafter.

(D) The criteria described in this subparagraph apply to a campus whose last preliminary or final overall performance rating was unacceptable. In addition to the criteria described in subparagraphs (A)-(C) of this paragraph, as applicable, each applicant must demonstrate evidence that the operating partner has the capacity necessary to successfully turn around campuses.

(i) For partnership benefits applied to district charter campuses authorized under TEC, Chapter 12, Subchapter C, that are approved for the 2020-2021 or 2021-2022 school year, evidence must be provided that the operating partner has staff in leadership positions with at least three years of experience managing campuses to academic success.

(ii) For partnership benefits applied to all campuses approved for the 2022-2023 school year and thereafter, evidence must be provided that the operating partner:

(I) has been in existence for at least three years prior to undertaking the management of the district campus;

(II) has managed multiple campuses for multiple years; and

(III) has a track record of managing campuses to academic success or has significantly improved the academic performance of campuses.

(E) In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by TEA staff to monitor the ongoing eligibility of the partnership.

(F) To receive benefits under TEC, §11.174(f) and (g) and §48.252, the district must continuously meet the requirements in this subsection.

(G) Notwithstanding this subsection, the commissioner will treat a campus granted a charter under TEC, Chapter 12, Subchapter C, as an open-enrollment charter school under TEC, §11.174(a)(1), if the Subchapter C charter was granted by a high-quality district authorizer. A high-quality district authorizer is a district that has successfully completed a state-approved professional development program in high-quality authorizing and has operated at least four Subchapter C campuses that are eligible for benefits under TEC, §11.174, in the prior year with at least 75% of those campuses performing at or above an agency-identified threshold for each campus's School Progress Domain.

(f) Decision finality. The approval or denial of the eligibility approval request is a final administrative decision by the commissioner and not subject to appeal under TEC, §7.057.

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 March 11, 2020.

TRD-202001081
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: December 27, 2019
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.29

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse. The amendments are adopted with minor changes to the proposed text as published in the January 17, 2020, issue of the *Texas Register* (45 TexReg 456). The rule will be republished.

Reasoned Justification. The amendments are adopted to implement Senate Bill 1200 (86th Regular Session, 2019), which allows certain military spouses licensed in other jurisdictions to engage in a business or occupation without obtaining a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under §55.0041(a).

Previously, the Board adopted 22 Texas Administrative Code (TAC) §1.29, which, in part, addresses the registration of military spouses as architects. The current rulemaking action implements SB 1200 by adopting subsection (c) to §1.29, which includes the following provisions. First, the rule implements temporary registration for qualifying military spouses, rather than "authorizing" practice. Under newly adopted Tex. Occ. Code §55.0041(f), the Board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The adopted rule does so. Issuing a registration rather than "authorizing" practice will ameliorate issues that arise from the centrality of sealing documents in the practice of architecture. Military spouses who qualify to practice under §55.0041 are required to comply with the laws and regulations applicable to the profession. This would include the requirements in statute and rule relating to the use of an official seal of a Texas architect. For example, under 22 TAC §1.103(a), all construction documents issued by an architect for regulatory approval, permitting, or construction are required to be sealed. Additionally, under Tex. Occ. Code §1051.654, a seal used by an architect in Texas is required to contain the words, "Registered Architect, State of Texas." However, if a military spouse is not registered in Texas, it would be inappropriate for the Board to issue a seal to the military spouse indicating that the spouse is a Texas registered architect. Without a seal, a military spouse would be unable to comply with §1.103 and related rules. Potential solutions to these issues could include enabling the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the Board determined that the simplest solution is to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the Board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and should result in decreased confusion for qualifying military spouses, their clients, and building officials.

Additionally, the adopted rule identifies the factors the Board will consider in determining whether the military spouse is licensed in a jurisdiction with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the Board prior to consideration of eligibility; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

Summary of Comments and Agency Response. The Board received a comment from the Office of the Governor suggesting a change in terminology to better align the rule with SB 1200. SB 1200 requires state agencies to identify the "jurisdictions" that have licensing requirements that are substantially equivalent to the requirements for the license in Texas and to verify that a military spouse is licensed in good standing in such a "jurisdiction." However, in subsection (c)(2) of the proposed rule, the Board referred to "states" and their licensing requirements. The Governor's office noted this difference and suggested that the proposed rule should be modified to refer to "jurisdiction" rather than "state." The Board agrees with this comment, and the rule is adopted with this modification.

The Board did not receive any other comments.

Statutory Authority. The amendment to §1.29 is adopted under Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

The amendment implements Texas Occupations Code Section 55.0041, which requires the board to adopt rules to establish a process to allow a military spouse to engage in a business or

occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§1.29. Registration of a Military Service Member, Military Veteran, or Military Spouse.

(a) Definitions.

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

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

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

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) Architectural registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active architectural registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for registration in this state; or

(B) Held an active architectural registration in this state within the five years preceding the application.

(3) As soon as practicable after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for military spouses.

(1) A military spouse may qualify for a temporary architectural registration if the spouse:

(A) holds a current architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for architectural registration in this state;

(B) notifies the Board in writing of the spouse's intent to practice Architecture in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary architectural registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the spouse's license or registration in the other jurisdiction; and

(ii) the spouse is issued a temporary architectural registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for an architectural registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Architect Registration Examination (ARE);

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary architectural registration:

(A) a written request for the Board to review the military spouse's eligibility for temporary architectural registration;

(B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

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

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

(4) A temporary architectural registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(5) Except as provided under the subsection, a military spouse who receives a temporary architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the Practice of Architecture in this state.

(6) A temporary architectural registration issued under this subsection may be revoked if the military spouse:

(A) fails to comply with paragraph (5) of this subsection; or

(B) the military spouse's license or registration required under paragraph (1)(a) of this subsection expires or is suspended or revoked.

(7) The Board shall not charge a fee for the issuance of a temporary architectural registration under this subsection.

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

Filed with the Office of the Secretary of State on March 16, 2020.

TRD-202001136

Lance Brenton
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.29

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse. The amendments are adopted with minor changes to the proposed text as published in the January 17, 2020, issue of the *Texas Register* (45 TexReg 458). The rule will be republished.

Reasoned Justification. The amendments are adopted to implement Senate Bill 1200 (86th Regular Session, 2019), which allows certain military spouses licensed in other jurisdictions to engage in a business or occupation without obtaining a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under §55.0041(a).

Previously, the Board adopted 22 Texas Administrative Code (TAC) §3.29, which, in part, addresses the registration of military spouses as landscape architects. The current rulemaking action implements SB 1200 by adopting subsection (c) to §3.29, which includes the following provisions. First, the rule implements temporary registration for qualifying military spouses, rather than "authorizing" practice. Under newly adopted Tex. Occ. Code §55.0041(f), the Board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The adopted rule does so. Issuing a registration rather than "authorizing" practice will ameliorate issues that arise from the centrality of sealing documents in the practice of landscape architecture. Military spouses who qualify to practice under §55.0041 are required under that law to comply with the laws and regulations applicable to the profession. This would include the requirements in statute and rule relating to the use of an official seal of a Texas landscape architect. For example, under 22 TAC §3.103(a), all construction documents issued by a landscape architect for regulatory approval, permitting, or construction are required to be sealed. Additionally, under Tex. Occ. Code §1052.065, a seal used by a landscape architect in Texas is required to contain the words, "Registered Landscape Architect, State of Texas." However, if a military spouse is not registered in Texas, it would be inappropriate for the Board to issue a seal to the military spouse indicating that the spouse is a Texas registered landscape architect. Without a seal, a military spouse would be unable to comply with §3.103 and related rules. Potential solutions to these issues could include enabling the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the Board determined that the simplest solution is to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the Board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and should result in decreased confusion for qualifying military spouses, their clients, and building officials.

Additionally, the adopted rule identifies the factors the Board will consider in determining whether the military spouse is licensed in a jurisdiction with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the Board prior to consideration of eligibility; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

Summary of Comments and Agency Response. The Board received a comment from the Office of the Governor suggesting a change in terminology to better align the rule with SB 1200. SB 1200 requires state agencies to identify the "jurisdictions" that have licensing requirements that are substantially equivalent to the requirements for the license in Texas and to verify that a military spouse is licensed in good standing in such a "jurisdiction." However, in subsection (c)(2) of the proposed rule, the Board referred to "states" and their licensing requirements. The Governor's office noted this difference and suggested that the proposed rule should be modified to refer to "jurisdiction" rather than "state." The Board agrees with this comment, and the rule is adopted with this modification.

The Board did not receive any other comments.

Statutory Authority. The amendment to §3.29 is adopted under Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

The amendment implements Texas Occupations Code Section 55.0041, which requires the board to adopt rules to establish a process to allow a military spouse to engage in a business or occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§3.29. Registration of a Military Service Member, Military Veteran, or Military Spouse.

(a) Definitions.

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

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

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

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) Landscape architectural registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active landscape architectural registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license in this state; or

(B) Held an active landscape architectural registration in this state within the five years preceding the application.

(3) As soon as practicable after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for military spouses.

(1) A military spouse may qualify for a temporary landscape architectural registration if the spouse:

(A) holds a current landscape architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for landscape architectural registration in this state;

(B) notifies the Board in writing of the spouse's intent to practice Landscape Architecture in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary landscape architectural registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the spouse's license or registration in the other jurisdiction; and

(ii) the spouse is issued a temporary landscape architectural registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a landscape architectural registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Landscape Architect Registration Examination (LARE);

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary landscape architectural registration:

(A) a written request for the Board to review the military spouse's eligibility for temporary landscape architectural registration;

(B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

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

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

(4) A temporary landscape architectural registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(5) Except as provided under the subsection, a military spouse who receives a temporary landscape architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Landscape Architecture in this state.

(6) A temporary landscape architectural registration issued under this subsection may be revoked if the military spouse:

(A) fails to comply with paragraph (5) of this subsection; or

(B) the military spouse's license or registration required under paragraph (1)(a) of this subsection expires or is suspended or revoked.

(7) The Board shall not charge a fee for the issuance of a temporary landscape architectural registration under this subsection.

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

Filed with the Office of the Secretary of State on March 16, 2020.

TRD-202001137
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 5, 2020
Proposal publication date: January 17, 2020
For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.39

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.39, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse. The amendments are adopted with minor changes to the proposed text published in the January 17, 2020, issue of the *Texas Register* (45 TexReg 460). The rule will be republished.

Reasoned Justification. The amendments are adopted to implement Senate Bill 1200 (86th Regular Session, 2019), which allows certain military spouses licensed in other jurisdictions to engage in a business or occupation without obtaining a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under §55.0041(a).

Previously, the Board adopted 22 Texas Administrative Code (TAC) §5.39, which, in part, addresses the registration of military spouses as registered interior designers. The current rulemaking action implements SB 1200 by adopting subsection (c) to §5.39, which includes the following provisions. First, the implements temporary registration for qualifying military spouses, rather than "authorizing" practice. Under newly adopted Tex. Occ. Code §55.0041(f), the Board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The adopted rule does so. Issuing a registration rather than "authorizing" practice will ameliorate issues that arise from the centrality of sealing documents in the practice of registered interior design. Military spouses who qualify to practice under §55.0041 are required under that law to comply with the laws and regulations applicable to the profession. This would include the requirements in statute and rule relating to the use of an official seal of a Texas registered interior designer. For example, under 22 TAC §5.113(a), all construction documents issued by a registered interior designer for regulatory approval, permitting, or construction are required to be sealed. Additionally, under Tex. Occ. Code §1053.058, a seal used by a registered interior designer in Texas is required to contain the words, "Registered Interior Designer, State of Texas." However, if a military spouse is not registered in Texas, it would be inappropriate for the Board to issue a seal to the military spouse indicating that the spouse is a Texas registered interior designer. Without a seal, a military spouse would be unable to comply with §5.113 and related rules. Potential solutions to these issues could include enabling the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the Board determined that the simplest solution is to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the Board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and should result in decreased confusion for qualifying military spouses, their clients, and building officials.

Additionally, the adopted rule identifies the factors the Board will consider in determining whether the military spouse is licensed in a jurisdiction with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the Board prior to consideration of eligibility; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

Summary of Comments and Agency Response. The Board received a comment from the Office of the Governor suggesting a change in terminology to better align the rule with SB 1200. SB 1200 requires state agencies to identify the "jurisdictions" that have licensing requirements that are substantially equivalent to the requirements for the license in Texas and to verify that a military spouse is licensed in good standing in such a "jurisdiction." However, in subsection (c)(2) of the proposed rule, the Board referred to "states" and their licensing requirements. The Governor's office noted this difference and suggested that the proposed rule should be modified to refer to "jurisdiction" rather than "state." The Board agrees with this comment, and the rule is adopted with this modification.

The Board did not receive any other comments.

Statutory Authority. The amendment to §5.39 is adopted under Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

The amendment implements Texas Occupations Code Section 55.0041, which requires the board to adopt rules to establish a process to allow a military spouse to engage in a business or occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§5.39. Registration of a Military Service Member, Military Veteran, or Military Spouse.

(a) Definitions.

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

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

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

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) Interior design registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active interior design registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license in this state; or

(B) Held an active interior design registration in this state within the five years preceding the application.

(3) As soon as practicable after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for military spouses.

(1) A military spouse may qualify for a temporary Interior Design registration if the spouse:

(A) holds a current interior design license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for Interior Design registration in this state;

(B) notifies the Board in writing of the spouse's intent to practice Interior Design in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary Interior Design registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the spouse's license or registration in the other jurisdiction; and

(ii) the spouse is issued a temporary Interior Design registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for an Interior Design registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Council for Interior Design Qualification (CIDQ) examination;

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary Interior Design registration:

(A) a written request for the Board to review the military spouse's eligibility for temporary Interior Design registration;

(B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

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

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

(4) A temporary Interior Design registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(5) Except as provided under the subsection, a military spouse who receives a temporary Interior Design registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Interior Design in this state.

(6) A temporary Interior Design registration issued under this subsection may be revoked if the military spouse:

(A) fails to comply with paragraph (5) of this subsection; or

(B) the military spouse's license or registration required under paragraph (1)(a) of this subsection expires or is suspended or revoked.

(7) The Board shall not charge a fee for the issuance of a temporary Interior Design registration under this subsection.

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

Filed with the Office of the Secretary of State on March 16, 2020.

TRD-202001138
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2019, adopted an amendment to §51.81, concerning Mandatory Boater Education, without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4966). The amended rule will not be republished.

The proposed amendment eliminates provisions regarding classroom elements of boater education, provides for exceptions to mandatory boater education requirements, and effects nonsubstantive housekeeping changes.

The Texas Water Safety Act (Parks and Wildlife Code, Chapter 31) requires persons born after September 1, 1993 to complete an approved boater education course before legally being able to operate a vessel of more than 15 horsepower, a windblown vessel of more than 14 feet in length, or a personal watercraft alone in public water. Almost all boater education is now provided via online and distance education modalities, making classroom components obsolete. Therefore, the amendment eliminates the requirement that a student attend at least six hours of training and be evaluated by an instructor. The amendment also eliminates the home study program, which the department has determined is not utilized enough to justify continuance, and rewords a provision governing the waiting period between examinations to make it clear that the provision applies to the equivalency examination and not a course examination.

Additionally, the amendment requires a background check to be conducted for persons seeking to become certified boating education instructors, which the department deems prudent in order to ensure that persons delivering boater education instruction under the aegis of the department are of sufficient character. The amendment also eliminates current subsection (g), which is unnecessary because the provision applies only to persons who are exempt from mandatory boater education requirements by age.

Finally, the amendment exempts certain members of the armed services and Merchant Marine from boater education requirements, as well as persons who possess a Canadian Pleasure Craft Operator's Card. The department recognizes that that there are personnel of the military branches and the Merchant Marine who by virtue of their training and or military occupation specialty have already met or exceeded any requirement of state law in terms of boating safety and that requiring such personnel to obtain boater education certification would be redundant and ineffective. Similarly, there is a Canadian equivalent to the boater education standards developed for the United States. The department sees no need to require persons who have obtained a Canadian Pleasure Craft Operator's Card to also obtain boater education certification in Texas.

The department received two comments opposing adoption of the rule. Both commenters provided a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that Canadians should be required to complete the Texas boater education course. The department disagrees with the comment and responds that the Canadian standards are consistent with American national boating education standards (which the Texas course also meets) and it is therefore unnecessary to require persons who have obtained a Canadian Pleasure Craft Operator's Card to also obtain boater education certification in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that boating education is a joke and should be restricted to classroom delivery because online classes allow students to cheat. The department disagrees with the comment and responds that not only has boating education been conclusively proven to have made boating safer, there is no statistical difference in boating accident data to indicate that online delivery of courses is less efficacious than classroom delivery. No changes were made as a result of the comment.

The department received four comments supporting adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.108, which requires the commission to adopt rules to administer a boating education program.

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 March 9, 2020.

TRD-202001040
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: March 29, 2020
Proposal publication date: September 13, 2019
For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2019, adopted an amendment to §53.50, concerning Training and Certification Fees, without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4967). The rule will not be republished. The amendment eliminates a provision requiring a service fee schedule to be established by the executive director, a provision exempting an online provider of boater education from collecting and forwarding a $10 fee to the department, and a provision establishing that the fees required by the section do not affect enhanced content offered by a boating education provider.

Justification for the Rules.

The Texas Water Safety Act (Parks and Wildlife Code, Chapter 31), requires persons born after September 1, 1993, to complete an approved boater education course before legally being able to operate a vessel of more than 15 horsepower, a windblown vessel of more than 14 feet in length, or a personal watercraft alone in public water.

Summary of Public Comment.

Parks and Wildlife Code, §31.108 allows the department to appoint agents to administer a boater education course or course equivalency examination. Section 31.108 requires agents to collect and forward to the department a $10 course or examination fee and allows agents to collect and retain a service fee. The department has determined that the statutory provisions of Parks and Wildlife Code, §31.108(b) do not apply to the provision in current rule exempting agents from the requirement to collect and forward to the department a $10 course or examination fee. The department has also determined that because there are a number of easy, and in some cases free, options for persons to obtain boater education, it is unnecessary to cap the amount of a service fee that a provider may charge a customer for a boater education course; therefore, the proposed amendment would eliminate the service fee cap and the provision requiring the executive director to establish a fee schedule for that purpose. The rule has the effect of defaulting to the requirements imposed by statute.

The department received one comment opposing adoption of the rule. The commenter stated that the fee for boating education should be eliminated and the "service fee be maintain at a controlled rate and allow the option not to be collected by the service provider." The department disagrees with the comment and responds that the requirement to collect a fee for the state is established by statute and cannot be modified or eliminated by the department. Additionally, if the intent of the comment is to suggest that the amount of the service fee be established by rule and leave the collection of that fee to the service provider, the department disagrees and responds that different service providers have different cost-recovery needs, that there are no-cost options available for obtaining boater education certification, and that service providers always have the option of collecting their own fees or not. No changes were made as a result of the comment.

The department received three comments supporting adoption of the proposed rule.

Statutory Authority.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.108, which requires the commission to adopt rules to administer a boating education program.

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 March 9, 2020.

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Robert D. Sweeney, Jr.
General Counsel
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CHAPTER 65. WILDLIFE
SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES
31 TAC §65.175, §65.176

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2020, adopted amendments to §65.175 and §65.176, concerning Threatened and Endangered Nongame Species. Section 65.175, concerning Threatened Species, is adopted with changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TegReg 7821). The rule will be republished. Section 65.176 is adopted without change and will not be republished.

The Arkansas River Speckled Chub has recently been renamed by the American Fisheries Society and is now known as the Peppered Chub. The change to §65.175 reflects that alteration and corrects a misspelling of the genus name for three species of chub. Similarly, the change makes an orthographic alteration for two species of aquatic invertebrates. As proposed, the species were referred to as "Spring Snails." The accepted form is "springsnails."

The amendment to §65.175, concerning Threatened Species, removes the Bald Eagle, Reticulate Collared Lizard, Reticulated Gecko, Southern Yellow Bat, Chihuahuan Desert Lyre Snake, Smooth Green Snake, Texas Indigo Snake, Timber (Canebrake) Rattlesnake, Opossum Pipefish, and four species of mussels (Golden Orb, Smooth Pimpleback, Texas Hornshell, Triangle Pigtoe) from the list of threatened species, and add four species of salamander (the Georgetown Salamander, Jollyville Plateau Salamander, Salado Springs Salamander, Texas Salamander), twelve aquatic invertebrates including six species of freshwater gastropods (Crowned Cavesnail, Carolinae Tryonia, Caroline's Springs Pyrg, Limpia Creek Springsnail, Metcalf's Tryonia, Presidio County Springsnail,), four species of mussels (Trinity Pigtoe, Guadalupe Orb, Guadalupe Fatmucket, Brazos Heelsplitter), as well as the Clear Creek Amphipod and Texas Troglobitic Water Slater, three species of birds (Black Rail, Red-crowned Parrot, Rufa Red Knot), thirteen species of freshwater fishes (Tamaulipas Shiner, Rio Grande Shiner, Headwater Catfish, Speckled Chub, Prairie Chub, Peppered Chub, Chub Shiner, Red River Pupfish, Plateau Shiner, Roundnose Minnow, Medina Roundnose Minnow, Nueces Roundnose Minnow, Guadalupe Darter), three species of saltwater fishes (Oceanic Whitetip, Great Hammerhead, Shortfin Mako), and two species of mammals (Tawny-bellied Cotton Rat, West Indian Manatee). The proposed amendment would also rename one category of organisms, replacing "molluscs" with "aquatic invertebrates," which is taxonomically more accurate.

The amendment to §65.176, concerning Endangered Species, removes the Black-capped Vireo, Humpback Whale and West Indian Manatee from the list of endangered species while adding three species of fish, five species of whales, and one species of mussel. The amendment also adds language to clarify that a species automatically receives state protection under the Parks and Wildlife Code as an endangered species under state law in Texas if it is indigenous to Texas and listed by the federal government as endangered and places three categories of organisms (Mollusca, Crustacea, aquatic animals) under a single heading ("aquatic invertebrates"), which is taxonomically more accurate.

Under Parks and Wildlife Code, Chapter 67, the commission is authorized to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species. Until recently, there has been no standardized method for listing, down-listing, or de-listing native animal and plant species on the department's lists of threatened species. The Conservation Status Assess-

ment protocol developed by NatureServe (Faber-Langendoen et al., 2012) is widely used across North America by the network of state natural heritage programs, many state and federal agencies, and non-governmental organizations (Master, 1991). These status ranks are used to define conservation priorities, influence development activities, and shape land management efforts by governmental agencies, conservation groups, industry, and private landowners. The department uses this protocol to denote Species of Greatest Conservation Need (SGCN) for the department's Texas Conservation Action Plan. The NatureServe protocol assesses species according to a set of ten biological and external factors that may affect their persistence, including Population Size, Range Extent, Area of Occupancy, Number of Occurrences, Number of Occurrences or Percent of Area Occupied with Good Viability/Ecological Integrity, Environmental Specificity, Assigned Overall Threat Impact, Intrinsic Vulnerability, and Long-term and Short-term Trends in population size or area. On the basis of this protocol, staff have determined that the species being listed as threatened species are likely to become endangered in the future as a result of their imperiled or critically imperiled status. With respect to the four species of mussels being removed, one species (the Texas hornshell) is being removed from the list of threatened species because it has been listed by the federal government as endangered. The other three are being removed because from time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. The Golden Orb, Smooth Pimpleback, and Triangle Pigtoe mussel have been recently reclassified as members of other taxa.

Under Parks and Wildlife Code, Chapter 68, a species is endangered under state law if it is: (1) indigenous to Texas and listed by the federal government as endangered; or (2) designated by the executive director of the Texas Parks and Wildlife Department as "threatened with statewide extinction." At the current time, the department maintains a single list of endangered species that consists only of those species indigenous to Texas listed by the federal government as endangered. The only species considered as "threatened with statewide extinction" under state law are those species listed as endangered by the federal government.

Under Chapter 68, the department is not required to list federally endangered species by rule; however, whenever the federal government modifies the list of endangered species, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state but must provide notice of intent to file such an order at least 60 days prior to filing the order. This rulemaking constitutes the department's notice of intent to modify the endangered species list.

The Black-capped Vireo was removed from the federal list of endangered species effective May 16, 2018 (83 FR 16228). Nearly extinct by 1990, it has experienced significant population rebound as a result of an intensive multi-state restoration and recovery effort.

The West Indian Manatee was removed from the federal list of endangered species effective May 5, 2017 (82 FR 16668) and simultaneously placed on the federal list of threatened species. Texas does not have permanent populations of this species, but individuals have been documented in Texas with increasing frequency during summer migrations; therefore, staff recommends that in addition to removing this species from the state endangered list that it be added to the state threatened list in order to afford protection to individuals that may appear in Texas as well as to prevent possible conflict and confusion with respect to its federal status as threatened.

The Gulf of Mexico population of Humpback Whale was removed from the federal list of endangered species, effective October 11, 2016 (81 FR 93639 96341).

The Mexican Blindcat was listed as endangered by the USFWS effective June 2, 1970 (35 FR 8491 8498) but has recently been documented to occur in Texas (within a deep cave at Amistad National Recreational Area).

The Sharpnose and Smalleye Shiners were listed as endangered by the USFWS effective September 3, 2014 (79 FR 45274). They are minnows native to streams in the upper reaches of the Brazos River basin in northwestern Texas whose historical ranges have been reduced by more than 50 percent.

The Blue Whale was listed as endangered by the USFWS effective December 2, 1970 (35 FR 18319) and has been documented as occurring in the Gulf of Mexico.

The Gulf of Mexico population of Bryde's Whale was listed as endangered by the USFWS effective May 15, 2019 (84 FR 15446).

The North Atlantic Right Whale was listed as endangered by the USFWS effective April 7, 2008 (73 FR 12024) and has been documented as occurring in the Gulf of Mexico.

The Sei Whale was listed as endangered by the USFWS effective December 2, 1970 (35 FR 12222) and has been documented as occurring in the Gulf of Mexico.

The Sperm Whale was listed as endangered by the USFWS effective December 2, 1970 (35 FR 18319) and has been documented as occurring in the Gulf of Mexico.

The Texas Hornshell Mussel was listed as endangered by the USFWS effective March 12, 2018 (83 FR 5720). This mussel is known to exist in the Devils River, the Pecos River, and the Rio Grande.

The department received five comments opposing adoption of the rules as proposed. Four of the of the five commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because three commenters provided multiple reasons for opposing adoption, the department categorized the comments individually; thus, the number of department responses is greater than the total number of commenters.

One commenter opposed adoption and stated that the Bald Eagle and Black-capped Vireo should not be removed from the list of threatened species. The commenter stated that the Bald Eagle should remain on the list because of symbolic value and the Black-capped Vireo should remain on the list because otherwise it will be destroyed by development. The department disagrees with the comment and responds that in both cases the biological data used by the department to determine population status indicate that continued listing is not warranted at this time. The department also notes that the Bald Eagle continues to be protected by the federal Bald and Golden Eagle Protection Act and both species continue to be protected by the federal Migratory Bird Protection Act. No changes were made as a result of the comment.

One commenter opposed adoption and stated that listing of the Eastern Black Rail and Red-crowned Parrot should not occur because of potential threats to the oil and gas industry. The commenter stated that the Eastern Black Rail has coexisted with oil and gas industries for over 100 years and that populations are historically stable. The commenter also stated that the U.S. Fish and Wildlife Service determined that the Red-crowned Parrot was not in need of federal listing and therefore should not be listed as threatened by the state. The department disagrees with the comment and responds that unlike federal actions, state listing as a threatened species does not involve habitat protection measures, only penalties for the act of killing a listed species (Class C misdemeanor); therefore, the department believes there is little to no likelihood that oil and gas activities could be affected in any significant way by listing. Additionally, Texas appears to be one of the last places in the historic range of the Eastern Black Rail where it can still be found, making Texas populations possible candidates for eventual listing by the federal government. By listing at the state level, additional resources can be devoted to population determinations that could be the basis for precluding such federal actions in the future. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules increase state regulation of private property. The department disagrees with the comment and responds that the rules place no limitations on the use of private property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has not thoroughly evaluated each species proposed for listing. The department disagrees with the comment and responds that there is a defensible and credible scientific justification for the listing of each species listed in the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules duplicate existing programs already funded by the legislature and implemented by the Comptroller and therefore "break with the state's precedent for the authority of the legislature." The department disagrees with the comment and responds that under Texas Parks and Wildlife Code, §12.0011 and Chapter 88, the Texas Parks and Wildlife Department is explicitly designated as the primary agency for protecting the state's indigenous fish, wildlife, and plants. Additionally, unambiguous authority has been delegated to the department by the legislature to promulgate rules regulating public fish and wildlife resources and plants under the authority of Texas Parks and Wildlife Code (Chapters 67, 68, and 88). The rules do not duplicate the work of any other state agency. The Texas Legislature has designated the Texas Comptroller to administer a habitat protection fund to be used to support the development or coordination of the development of habitat conservation plans for federally listed species, candidate conservation plans for species that are candidates for federal listing, and to pay the costs of monitoring or administering the implementation of such plans, but the Comptroller has no regulatory authority with respect to indigenous wildlife. The Comptroller's funding cannot be spent to support protection or study of species that are not federally listed or candidates for federal listing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules create a new set of hoops to jump through in order to obtain clear title to develop land, lengthens the survey and inspection process, adds undue costs, and thwarts development. The department disagrees with the comment and responds that nothing in the rules exerts any impact whatsoever on issues regarding titles, surveys, inspections, or any other aspect of land development, including costs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules expand state regulation of private property, represent an unprecedented expansion in the number of species regulated under state law, are duplicative of more effective ongoing programs already being funded by the Texas Legislature and operated by the Texas Comptroller in partnership with state universities; and rely on flawed data and unreliable, incomplete information. The department disagrees with the comment and responds that the rules do not regulate private property, let alone expand state regulation of private property. The rules regulate public fish and wildlife resources and plants under the authority of Texas Parks and Wildlife Code (Chapters 67, 68, and 88). The rules are also not an unprecedented expansion in the number of species regulated under state law. Under Texas Parks and Wildlife Code (Chapters 1, 67, 68, and 88), the Texas Legislature has authorized the department to regulate all public wildlife and fish resources and all protected, threatened, and endangered plants. In 2014, the department began implementing NatureServe's Conservation Status Assessment methodology across all taxonomic groups in its continuing scientific investigations of nongame fish and wildlife and in its study and identification of endangered, threatened, and protected plants pursuant to the direction of Texas Parks and Wildlife Code, §§67.003, 68.015, and 88.006-007. The application of this methodology, comprehensively applied across the range of wildlife, fish, and plant species regulated by the department, resulted in the rule as adopted. Thus, scientific research alone is the basis for the number of species proposed for state listing. The rules are not duplicative of "more effective ongoing programs already being funded by the Texas Legislature and operated by the Texas Comptroller in partnership with state universities." The Texas Legislature has not designated the Texas Comptroller to protect the state's fish, wildlife, and plant species. Rather, under Texas Parks and Wildlife Code, §12.0011 and Chapter 88, the Texas Parks and Wildlife Department is explicitly designated as the primary agency for protecting the state's fish, wildlife, and plants. The Texas Comptroller administers a habitat protection fund to be used to support the development or coordination of the development of habitat conservation plans for federally listed species, candidate conservation plans for species that are candidates for federal listing, or to pay the costs of monitoring or administering the implementation of such plans. The Comptroller's funding cannot be spent to support protection or study of species that are not federally listed or candidates for federal listing. Department staff coordinates regularly with Texas Comptroller staff to ensure there is no duplication of research effort or funding and to maximize data generated as part of the best available science to inform conservation status assessments and federal listing decisions for Texas species. The majority (33) of the species proposed for the state threatened list would not be eligible for Comptroller-funded research. Additionally, department staff has consulted with Texas Comptroller staff regarding the rules and Comptroller's staff supported the rulemaking. The rules do not rely on flawed data and unreliable, incomplete information. The rules are based upon the best available science. Department staff applied the NatureServe methodology for conducting conservation status assessments for each of the species recommended for addition to the state threatened list. That process involves coordinating teams of leading subject-matter experts in the state, including

researchers from universities and other professionals with taxonomic expertise, to assess all available peer-reviewed data and to reach a consensus about the current conservation status of each species. It is a consistent, transparent, nationally-recognized, and widely-accepted methodology used by other state wildlife agencies and conservation groups. No changes were made as a result of the comment.

One commenter opposed adoption and stated that numerous species not listed as threatened on the federal level have nonetheless been placed on the state's threatened species lists, the additions to the state's threatened species lists break with historical practice, lack any reasoned basis, represent bad policy, and intrude upon policy authority already delegated by the Texas Legislature to other state officials and agencies. The department disagrees with the comment and responds that there are no statutory provisions compelling or prescribing department regulatory actions with respect to species listed or not listed as threatened by the federal government, that the state list of threatened species has long contained species not listed by the federal government as threatened, that the list as adopted represents the employment of best available science (i.e., a reasoned basis for the action exists) in accordance with the requirements of Parks and Wildlife Code (which represents public policy as enacted by the Legislature), and that, as noted previously, the department is the primary agency designated by the legislature for the protection of the state's natural fish, animal, and plant resources and the rules as adopted therefore do not usurp the authority of any other state agency or official. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unnecessary for the stated goal of precluding potential federal listing actions because the Texas Comptroller already operates programs that achieve many of the goals without imposing additional regulatory burdens. The commenter did not provide any supporting data or evidence; nevertheless, the department disagrees with the comment and responds that one of the factors used by the federal government in listing decisions is "the inadequacy of existing regulatory mechanisms." Protecting species by designating them as threatened is an existing regulatory mechanism. The failure to maintain the list could therefore be regarded by the federal government as a failure to use existing regulatory mechanisms, which in turn could be a factor in a federal listing action. Additionally, as explained in the responses to previous comments, no program administered by the Comptroller achieves the goals of the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules pose an immediate threat to the principles of limited government and are potentially the first step in a long-term expansion of regulatory authority that was neither intended nor authorized by the Texas Legislature. The department disagrees with the comment and responds that the "principles of limited government" is a subjective term and at any rate neither the Parks and Wildlife Code nor the Government Code, the two bodies of law followed by the department while engaging in rulemaking activities, employ or define that term. The department adds it exercises only those authorities it has been granted by the legislature. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that additions to the state's threatened species should be by separate, individualized proposals, accompanied by a detailed explanation of the reasons and evidence supporting listing. The department disagrees with the comment and responds that the department engages in rulemaking activities in compliance with the requirements of the Administrative Procedure Act, or APA (Government Code, Chapter 2001). No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the state list of threatened species should not include species not listed by the federal government as threatened and should not include species that do not have a meaningful connection to the Texas geographic region. The department disagrees with the comment in part and agrees with the comment in part. The state list of threatened species differs in authority and purpose from the federal list of threatened species. The state list does not include species that lack a connection to the Texas geographic region, inasmuch as all of these species have been documented in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules exceed their proper limitations and cause harmful, unintended consequences. The department disagrees with the comment and responds that there is a rational connection between the rules and both the department's intent and its statutory authority, and that the rules will not result in unintended consequences, harmful or otherwise. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the West Indian Manatee should not be on the list of threatened species because there is no permanent population in Texas. The department disagrees with the comment and responds that presence or absence of permanent populations is not a factor in determining the need for listing; many species of fish and wildlife are migratory and some are highly migratory. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the de-listing of species does nothing to lighten the regulatory burdens on Texas private property owners. The department disagrees with the comment and responds that the rules do not impose any burden on any property owner. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the penalties imposed for a violation of commercial nongame regulations affecting six species being removed from the state list of threatened species and placed on the list of species prohibited from being used in commercial activity illustrate the illusory nature of the department's claims that de-listing is beneficial. The department disagrees with the comment and responds that the referenced penalties are provided by statute and apply to all violations of Parks and Wildlife Code, Chapter 67, and apply equally to all nongame species irrespective of listing as threatened species or species subject to commercial nongame collection rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is nothing "voluntary" about observing the legal restrictions on a person's ability to take, possess, propagate, transport, ship, export, import, sell, offer for sale, or release threatened species and that failing to observe these requirements and restrictions may result in not only a criminal fine, but even jail time. The department disagrees and responds that each of the actions for which a penalty is prescribed is impossible to undertake without conscious awareness of the unlawful nature of the action. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's desire to provide guidance on conservation and building partnerships with landowners who can choose to implement voluntary conservation measure fails to acknowledge the mandatory nature of criminal penalties imposed by the rules. The department disagrees with the comment and responds that while it is factually accurate that the department encourages voluntary conservation measures, the penalties imposed by the rules are not coercive, but dependent upon the actions of individual persons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are nothing more than regulatory overreach. The department disagrees with the comment and responds that the rules as adopted are the result of the agency discharging its statutory duty under the tenets of sound biological science to ensure the ability of nongame wildlife to perpetuate itself. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is too reliant on data gathered by a private entity (NatureServe) without privity to the state. The department disagrees with the comment and responds that the department does not use NatureServe data for any department decisions, but uses the NatureServe protocol, which, as explained in earlier response to comment, is widely accepted as legitimate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because the protections offered by listing a species as state threatened are minimal there is no need for listing at all and that designation as "species of greatest conservation need" is sufficient to engender additional research efforts and voluntary conservation efforts. The department disagrees with the comment and responds that because listing at the state level is a factor in the listing process used by the federal government, there is potential usefulness in precluding federal regulatory actions in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that inclusion of a species on the state threatened list encourages third-party petitions to the federal government for federal listing. The department disagrees with the comment and responds because listing at the state level is a factor in the listing process used by the federal government, there is potential usefulness in precluding federal regulatory actions in Texas. The department is not aware of any third-party petition for federal listing predicated solely on a listing action by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department assessment protocol is deficient in comparison to the scientific data collection standards required by the federal government. The department disagrees with the comment and responds that the department process involves a protocol that coordinates teams of leading subject-matter experts in the state, including researchers from universities and other professionals with taxonomic expertise, to assess all available peer-reviewed data and to reach a consensus about the current conservation status of each species, which is a consistent, transparent, nationally-recognized, and widely-accepted methodology used by other state wildlife agencies and conservation groups. The department notes that there is no statutory requirement to employ the federal process, and that the federal process is conducted according to federal statutes which differ from state law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that stakeholders should have an opportunity to review and comment on the methodologies utilized in the listing process prior to commission action. The department agrees with the comment and responds that the department complies with the requirements of the Administrative Procedure Act (Government Code, Chapter 2001), which, among other things, provides for a minimum of 30 days' notice of proposed rulemaking. No changes were made as a result of the comment.

The Texas Public Policy Foundation, Texas Farm Bureau, and Texas Railroad Commission commented against adoption of the proposed rules.

The Permian Basin Petroleum Association and Occidental Petroleum commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and Chapter 68, which authorizes regulations necessary to administer the provisions of Chapter 68 and to attain its objectives, including regulations to govern the publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products and limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

§65.175. Threatened Species.

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:
Figure: 31 TAC §65.175

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 March 10, 2020.

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Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: December 20, 2019
For further information, please call: (512) 389-4775

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §65.331

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2020 adopted an amendment to §65.331, concerning Commercial Activity, without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7824). The rule will not be republished. The amendment prohibits commercial activity involving six species of reptiles.

Under Parks and Wildlife Code, Chapter 67, "nongame wildlife" is defined as those species of vertebrate and invertebrate

wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters. Chapter 67 requires the commission to "establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species." In another rulemaking published elsewhere in this issue of this issue of the *Texas Register,* the department removed six species of reptiles from the list of state-threatened species. The department has determined, based on biological parameters, that although the species removed from the threatened list are no longer believed to be in danger of statewide extinction, their population status remains such that protection from commercial exploitation is warranted.

Nongame species comprise over 90 percent of the wildlife species that occur in Texas. Although the department is unable to monitor, survey, or conduct research on every nongame species in Texas, ongoing research is both conducted and monitored by the department.

Nongame wildlife populations are problematic by their very nature, due to their numbers, diversity, and relative obscurity compared to game species. Historically, the most intensive management and research activities in the United States and Texas have been focused on game species popular with sport hunters, such as deer, turkey, pronghorn antelope, and others. However, game species represent a small fraction of the overall number of species in any ecosystem; in Texas, eight species of wildlife are designated by statute as game animals, whereas there are approximately 1,100 species of nongame vertebrate wildlife. Because the number of nongame species dwarfs the number of game species, nongame species are a much more problematic management target within the traditional contexts. Management of game species typically involves intensive population, habitat, and harvest investigations. However, because of staffing and budgetary realities, this type of management regime is unrealistic for the many nongame species that occur in the state. One salient point firmly established by empirical evidence is that unfettered commercial exploitation of wildlife almost always results in disaster for the targeted species. In fact, the genesis of modern game species management came about as a result of unregulated commercial exploitation of wildlife resources. By the middle of the 20th century, many species of wildlife were in serious decline or in danger of extirpation in many parts of the United States and Texas as a result of unregulated, large-scale, commercial harvest. However, as a result of regulatory and management efforts, most game species are now thriving. The department's rules governing commercial take of nongame species are intended to prevent depletion of nongame species and to allow those species to successfully perpetuate themselves.

The department received no comments opposing or supporting adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

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 March 10, 2020.

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CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

31 TAC §69.8

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2020 adopted an amendment to §69.8, concerning Endangered and Threatened Plants, with changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7825). The rule will be republished. The amendment adds one species to the list of endangered species of plants and eight species to the list of threatened plants.

The change corrects the name of a species of succulent, Nellie's cory cactus. The name as published was Nellie cory cactus.

Under Parks and Wildlife Code, Chapter 88, a species of plant is endangered, threatened, or protected if it is indigenous to Texas and: (1) listed by the federal government as endangered; or (2) designated by the executive director of the Texas Parks and Wildlife Department as endangered, threatened or protected. At the current time, the department maintains a single list of endangered plants that contains only those plants indigenous to Texas listed by the federal government as endangered.

Under Chapter 88, the department is not required to list federally endangered plants by rule; however, whenever the federal government modifies the list of endangered plants, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of endangered, threatened, and protected species by filing an order with the secretary of state.

Until recently, there has been no standardized method for listing, down-listing, or de-listing native animal and plant species on the department's lists of threatened species. The Conservation Status Assessment protocol developed by NatureServe (Faber-Langendoen et al., 2012) is widely used across North America by the network of state Natural Heritage Programs, many state and federal agencies, and non-governmental organizations (Master, 1991). These status ranks are used to define conservation priorities, influence development activities, and shape land management efforts by governmental agencies, conservation groups, industry, and private landowners. The department has begun using this protocol to denote Species of Greatest Conservation Need (SGCN) for the department's Texas Conservation Action Plan. The NatureServe protocol assesses species according to a set of 10 biological and external factors that may affect their persistence, including population size, range extent, area of occupancy, number of occurrences, number of occurrences or percent of area occupied with good viability/ecological integrity, en-

vironmental specificity, assigned overall threat impact, intrinsic vulnerability, and long-term and short-term trends in population size or area. On the basis of this protocol, staff have determined that the species being listed as threatened species are species likely to become endangered in the future.

The Guadalupe Fescue *(Festuca ligulata)* was listed as endangered by the U.S. Fish and Wildlife Service effective October 10, 2017 (82 FR 422245).

The proposed amendment also eliminates the subcategories of endangered and threatened plants and replaces them with a single list of endangered plants and a single list of threatened plants.

The department received two comments opposing adoption of the rule as proposed. Those comments, accompanied by the department's response to each, follow. The department notes that because one comment was lengthy and addressed a wide variety of issues, the department has addressed it on a point-by-point basis. Therefore, the number of responses is greater than the number of commenters.

One commenter opposed adoption and stated that *Passiflora filipes* should be listed because of the similarity of its range to that of the ocelot. The department disagrees with the comment and responds that the conservation status of *Passiflora filipes* is "secure" and therefore listing as a threatened species is not warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules increase state regulation of private property. The department disagrees with the comment and responds that the rules place no limitations on the use of private property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has not thoroughly evaluated each species proposed for listing. The department disagrees with the comment and responds that there is a defensible and credible scientific justification for the listing of each species listed in the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules duplicate existing programs already funded by the legislature and implemented by the Comptroller and therefore "break with the state's precedent for the authority of the legislature." The department disagrees with the comment and responds that under Texas Parks and Wildlife Code, §12.0011 and Chapter 88, the Texas Parks and Wildlife Department is explicitly designated as the primary agency for protecting the state's indigenous fish, wildlife, and plants. Additionally, authority has been delegated to the department by the legislature to promulgate rules regulating public fish and wildlife resources and plants under the authority of Texas Parks and Wildlife Code (Chapters 67, 68, and 88). The rules do not duplicate the work of any other state agency. The Texas Legislature has designated the Texas Comptroller to administer a habitat protection fund to be used to support the development or coordination of the development of habitat conservation plans for federally listed species, candidate conservation plans for species that are candidates for federal listing, and to pay the costs of monitoring or administering the implementation of such plans, but the Comptroller has no regulatory authority with respect to indigenous wildlife. The Comptroller's funding cannot be spent to support protection or study of species that are not federally listed or candidates for federal listing No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules create a new set of hoops to jump through in order to obtain clear title to develop land, lengthens the survey and inspection process, adds undue costs, and thwarts development. The department disagrees with the comment and responds that nothing in the rules exerts any impact whatsoever on issues regarding titles, surveys, inspections, or any other aspect of land development, including costs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules expand state regulation of private property, represent an unprecedented expansion in the number of species regulated under state law, are duplicative of more effective ongoing programs already being funded by the Texas Legislature and operated by the Texas Comptroller in partnership with state universities, and rely on flawed data and unreliable and incomplete information. The department disagrees with the comment and responds that the rules do not regulate private property, let alone expand state regulation of private property. The rules regulate public fish and wildlife resources and plants under the authority of Texas Parks and Wildlife Code (Chapters 67, 68, and 88). The rules are also not an unprecedented expansion in the number of species regulated under state law. Under Texas Parks and Wildlife Code (Chapters 1, 67, 68, and 88), the Texas Legislature has authorized the department to regulate all public wildlife and fish resources and all protected, threatened, and endangered plants. In 2014, the department began implementing NatureServe's Conservation Status Assessment methodology across all taxonomic groups in its continuing scientific investigations of nongame fish and wildlife and in its study and identification of endangered, threatened, and protected plants pursuant to the direction of Texas Parks and Wildlife Code, §§67.003, 68.015, and 88.006-007. The application of this methodology, comprehensively applied across the range of wildlife, fish, and plant species regulated by the department, resulted in the rule as adopted. Thus, scientific research alone is the basis for the number of species proposed for state listing. The rules are not duplicative of "more effective ongoing programs already being funded by the Texas Legislature and operated by the Texas Comptroller in partnership with state universities." The Texas Legislature has not designated the Texas Comptroller to protect the state's fish, wildlife, and plant species. Rather, under Texas Parks and Wildlife Code, §12.0011 and Chapter 88, the Texas Parks and Wildlife Department is explicitly designated as the primary agency for protecting the state's fish, wildlife, and plants. The Texas Comptroller administers a habitat protection fund to be used to support the development or coordination of the development of habitat conservation plans for federally listed species, candidate conservation plans for species that are candidates for federal listing, or to pay the costs of monitoring or administering the implementation of such plans. The Comptroller's funding cannot be spent to support protection or study of species that are not federally listed or candidates for federal listing. Department staff coordinates regularly with Texas Comptroller staff to ensure there is no duplication of research effort or funding and to maximize data generated as part of the best available science to inform conservation status assessments and federal listing decisions for Texas species. Additionally, department staff has consulted with Texas Comptroller staff regarding the rules and Comptroller's staff supported the rulemaking. The rules do not rely on flawed data and unreliable, incomplete information. The rules are based upon the best available science. Department staff applied the NatureServe methodology for conducting conservation status

assessments for each of the species recommended for addition to the state threatened list. That process involves coordinating teams of leading subject-matter experts in the state, including researchers from universities and other professionals with taxonomic expertise, to assess all available peer-reviewed data and to reach a consensus about the current conservation status of each species. It is a consistent, transparent, nationally recognized, and widely-accepted methodology used by other state wildlife agencies and conservation groups. No changes were made as a result of the comment.

One commenter opposed adoption and stated that numerous species not listed as threatened on the federal level have nonetheless been placed on the state's threatened species lists, the additions to the state's threatened species lists break with historical practice, lack any reasoned basis, represent bad policy, and intrude upon policy authority already delegated by the Texas Legislature to other state officials and agencies. The department disagrees with the comment and responds that there are no statutory provisions compelling or prescribing department regulatory actions with respect to species listed or not listed as threatened by the federal government, that the state list of threatened species has long contained species not listed by the federal government as threatened, that the list as adopted represents the employment of best available science (i.e., a reasoned basis for the action exists) in accordance with the requirements of Parks and Wildlife Code (which represents public policy as enacted by the Legislature), and that, as noted previously, the department is the primary agency designated by the legislature for the protection of the state's natural fish, animal, and plant resources and the rules as adopted therefore do no usurp the authority of any other state agency or official. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unnecessary for the stated goal of precluding potential federal listing actions because the Texas Comptroller already operates programs that achieve many of the goals without imposing additional regulatory burdens. The commenter did not provide any supporting data or evidence; nevertheless, the department disagrees with the comment and responds that one of the factors used by the federal government in listing decisions is "the inadequacy of existing regulatory mechanisms." Protecting species by designating them as threatened is an existing regulatory mechanism. The failure to maintain the list could therefore be regarded by the federal government as a failure to use existing regulatory mechanisms, which in turn could be a factor in a federal listing action. Additionally, as explained in the responses to previous comments, no program administered by the Comptroller achieves the goals of the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules pose an immediate threat to the principles of limited government and are potentially the first step in a long-term expansion of regulatory authority that was neither intended nor authorized by the Texas Legislature. The department disagrees with the comment and responds that the department follows the Parks and Wildlife Code and the Government Code while engaging in rulemaking activities. The department exercises only those authorities it has been granted by the legislature. No changes were made as a result of the comment.

One commenter opposed adoption and stated that additions to the state's threatened species list should be by separate, individualized proposals, accompanied by a detailed explanation of the reasons and evidence supporting listing. The department disagrees with the comment and responds that the department engages in rulemaking activities in compliance with the requirements of the Administrative Procedure Act, or APA (Government Code, Chapter 2001). No changes were made as a result of the comment.

One commenter opposed adoption and stated that the state list of threatened species should not include species not listed by the federal government as threatened and should not include species that do not have a meaningful connection to the Texas geographic region. The department disagrees with the comment in part and agrees with the comment in part. The state list of threatened species differs in authority and purpose from the federal list of threatened species. The state list does not include species that lack a connection to the Texas geographic region, inasmuch as all of these species have been documented in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules exceed their proper limitations and cause harmful, unintended consequences. The department disagrees with the comment and responds that there is a rational connection between the rules and both the department's intent and its statutory authority, and that the rules will not result in unintended consequences, harmful or otherwise. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the de-listing of species does nothing to lighten the regulatory burdens on Texas private property owners. The department disagrees with the comment and responds that the rules do not impose any burden on any property owner. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's desire to provide guidance on conservation and building partnerships with landowners who can choose to implement voluntary conservation measure fails to acknowledge the mandatory nature of criminal penalties imposed by the rules. The department disagrees with the comment and responds that while it is factually accurate that the department encourages voluntary conservation measures, the penalties imposed by the rules are not coercive, but dependent upon the actions of individual persons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are nothing more than regulatory overreach. The department disagrees with the comment and responds that the rules as adopted are the result of the agency discharging its statutory duty under the tenets of sound biological science. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is too reliant on data gathered by a private entity (NatureServe) without privity to the state. The department disagrees with the comment and responds that the department does not use NatureServe data for any department decisions, but uses the NatureServe protocol, which, as explained in earlier response to comment, is widely accepted as legitimate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because the protections offered by listing a species as state threatened are minimal there is no need for listing at all and that designation as "species of greatest conservation need" is sufficient to engender additional research efforts and voluntary conservation efforts. The department disagrees with the comment and re-

sponds that because listing at the state level is a factor in the listing process used by the federal government, there is potential usefulness in precluding federal regulatory actions in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that inclusion of a species on the state threatened list encourages third-party petitions to the federal government for federal listing. The department disagrees with the comment and responds because listing at the state level is a factor in the listing process used by the federal government, there is potential usefulness in precluding federal regulatory actions in Texas. The department is not aware of any third-party petition for federal listing predicated solely on a listing action by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department assessment protocol is deficient in comparison to the scientific data collection standards required by the federal government. The department disagrees with the comment and responds that the department process involves a protocol that coordinates teams of leading subject-matter experts in the state, including researchers from universities and other professionals with taxonomic expertise, to assess all available peer-reviewed data and to reach a consensus about the current conservation status of each species, which is a consistent, transparent, nationally-recognized, and widely-accepted methodology used by other state wildlife agencies and conservation groups. The department notes that there is no statutory requirement to employ the federal process, and that the federal process is conducted according to federal statutes which differ from state law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that stakeholders should have an opportunity to review and comment on the methodologies utilized in the listing process prior to commission action. The department agrees with the comment and responds that the department complies with the requirements of the Administrative Procedure Act (Government Code, Chapter 2001), which, among other things, provides for a minimum of 30 days' notice of proposed rulemaking. No changes were made as a result of the comment.

The Texas Public Policy Foundation commented against adoption of the proposed rule.

The department received one comment supporting adoption of the rule.

The amendment is adopted under Parks and Wildlife Code, Chapter 88, which requires the department to adopt regulations to provide for the identification and publication of lists of endangered, threatened, or protected plants.

§69.8. Endangered and Threatened Plants.

(a) The following plants are endangered:

Figure: 31 TAC §69.8(a)

(b) The following plants are threatened:

Figure: 31 TAC §69.8(b)

(c) Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy will not, in and of itself, affect the status of a species as endangered, threatened or protected.

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 March 10, 2020.

TRD-202001045
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: December 20, 2019
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board ("TWDB" or "board") adopts the repeal of 31 TAC §§363.401 - 363.404 and new Subchapter D, 31 TAC §§363.401 - 363.409, relating to the establishment of flood financial assistance by recent statutory amendments to Chapter 15 and 16 of the Texas Water Code. The repeal of Subchapter D, §§363.401 - 363.404 is adopted without changes. The repealed rules will not be republished. Sections 363.401 - 363.409 are adopted with changes to the text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7352). The new rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

Through Senate Bill 7 of the 86th Legislature, 2019, the Legislature created the Flood Infrastructure Fund (FIF) and the Texas Infrastructure Resiliency Fund (TIRF) to ensure financial assistance is available for flood control, drainage, and mitigation projects, including nature-based and nonstructural projects. The new flood financial assistance will be administered by the TWDB and is designed to make the implementation of flood projects more affordable for Texas communities and to meet the immediate needs for funding from political subdivisions.

The TWDB is adopting the present rules to implement the establishment of flood financial assistance by creating a new subchapter in Chapter 363, relating to Financial Assistance Programs. By placing the flood financial assistance rules into this chapter, the general provisions of Chapter 363 will apply. This will allow the board to use the procedures and practices common to many of the board's existing financial programs rather than to recreate them separately in the flood financial assistance rules. Applicants will find the utilization of existing practices convenient and efficient, as opposed to having to navigate and understand new processes. To read and understand the rules in Chapter 363, Subchapter D that will apply to flood financial assistance, the rules must be read together with Subchapter A, relating to General Provisions.

The executive administrator envisions that the application process for flood financial assistance will be similar to the processes for the board's financial programs, as modified by any process improvements. The board will solicit initial abridged applications and then a longer application at the appropriate time. The abridged application will allow the applicant to describe the proposed project and provide information about the issues the project will address. After the board receives the abridged applications, staff will rate and prioritize the projects.

The executive administrator will recommend a prioritized list of applications based on the criteria specified in §363.405. The prioritized list of projects, as recommended by the executive administrator, will go to the board for deliberation and preliminary decision. The projects that are selected by the board for funding may be required to submit additional information by the board. The longer application will then be subject to the executive administrator's traditional analysis for evaluating projects.

Prior to proposing these rules, the board engaged in an extensive effort of outreach for suggestions on flood planning and financing. TWDB staff traveled across the state and solicited input from stakeholders on how to implement the flood financial assistance program. The TWDB held a public hearing to receive public comments on the rules during the public comment period.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

The repeal of §§363.401 - 363.404 removes the current flood control provisions to allow for the implementation of the new flood financial assistance program.

Amendment to 31 TAC Chapter 363 by addition of a New Subchapter D (relating to Flood Financial Assistance)

31 TAC §363.401. Scope of Subchapter D.

Section 363.401 is adopted to specify the scope and coverage of Subchapter D. Subchapter D governs the board's new flood financial assistance program established by the Texas Water Code, Chapter 15, Subchapter I and Texas Water Code, Chapter 16, Subchapter L. The new section also clarifies that the provisions of Chapter 363, Subchapter A are applicable to the flood financial assistance program unless they are in conflict with Subchapter D.

31 TAC §363.402. Definitions.

Section 363.402 is adopted to clarify the definitions of words and terms used throughout Subchapter D.

In the adopted rule, the definitions of "drainage" and "flood control" were changed to clarify that these definitions include rehabilitation.

While the TWDB received public comments to revise the definition of "flood project" in §363.402(6), TWDB retained the statutory definition of "flood project" from Texas Water Code §§15.531 and 16.451. Although included in the statutory definition, at this time, the TWDB has not received appropriations to fund "a federally authorized project to deepen a ship channel affected by a flood event." The acquisition of necessary real estate and other ancillary interests may be eligible expenses of a project, as delineated in the Flood Intended Use Plan.

In the adopted rule, the definition of "nonstructural flood mitigation" was changed to clarify that watershed planning, flood mapping, and acquisition of conservation easements are included.

31 TAC §363.403. Flood Intended Use Plan.

Section 363.403 is adopted to outline the procedures for notice, comment, and adoption of a Flood Intended Use Plan. This document will contain details on the funding structure, prioritization, and criteria for each round of funding.

This section was added pursuant to public comments. Subsequent sections were renumbered from the proposed version accordingly.

31 TAC §363.404. Prioritization System.

Section 363.404 is adopted to provide a prioritization system for projects to be funded. The processing of applications and the steps in the prioritization system are similar to the functioning of the prioritization for the current State Revolving Fund programs. However, the dates and timing of flood financial assistance will not be fixed by rule to give the board additional flexibility in the timing of when it will make funds available. The factors to be evaluated in the prioritization will be outlined in a Flood Intended Use Plan, which will identify the uses of the funds for flood projects.

In the adopted rule, further detail on which elements are required in the abridged application and the full application were added to provide clarity on the issue.

This section was numbered as 363.403 in the proposed rule.

31 TAC §363.405. Use of Funds.

Section 363.405 incorporates the restrictions on the use of funds provided by Texas Water Code Chapters 15 and 16, as related to providing financial assistance to applicants. The board expects that the terms of the financial assistance provided to applicants will be tailored to best fit the needs of the applicants. After the board adopts the initial state flood plan, the flood financial assistance funds will be used for projects in the state flood plan, as required by Texas Water Code §§15.5341 and 16.4545.

In the adopted rule, statute language was added to clarify that the Board may make transfers to the Research and Planning Fund.

This section was numbered as 363.404 in the proposed rule. Subsection (c) was moved from Section 363.404 (numbered 363.403 in the proposed rule).

31 TAC §363.406. Terms of Financial Assistance.

Section 363.406 is adopted to clarify when deferrals for principal and interest payments may be made and to outline the terms that applicants will follow when receiving flood financial assistance.

This section was numbered as 363.405 in the proposed rule.

31 TAC §363.407. Findings Required.

Section 363.407 is adopted to state the findings that are required prior to approval of an application for flood financial assistance, pursuant to Texas Water Code §15.536. This rule does not require that all eligible political subdivisions substantially affected by the flood project be co-applicants. The statutory language on the required board finding is further described by a reference to the contents of the complete application contained in the Section 363.408.

This section was numbered as 363.406 in the proposed rule.

31 TAC §363.408. Complete Application Requirements.

Section 363.408 is adopted to outline the requirements applicants will follow when submitting the full, complete application for flood financial assistance after prioritization. If an applicant proposes a flood control project, and the project watershed is partially located outside the political subdivision making the application, the applicant will be required to submit a memorandum of understanding that includes all of the eligible political subdivisions. This requirement is from Texas Water Code §§15.005, 15.535, and 15.536. Applicants will have to submit an affidavit demonstrating that they have acted cooperatively with the public and other political subdivisions in the area, recognizing that an applicant may fulfill this requirement by providing ample notice

and opportunity to participate to others. The affidavit will fulfill the purposes of Texas Water Code §15.535, which requires political subdivisions to demonstrate their cooperation. This language was changed from the proposed rule pursuant to public comment.

Language in subsection (b)(4) was moved from the definition of "project watershed."

In the adopted rule, further detail on which elements are required in the abridged application and the full application were added to provide clarity on the issue.

This section was numbered as 363.407 in the proposed rule.

31 TAC §363.409. Investment and Administration of Funds.

Section 363.409 is adopted to implement the requirement from Texas Water Code §§15.537 and 16.460, which require that the board outline the investment and administration of funds.

This section was numbered as 363.408 in the proposed rule.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation and create a new flood financial assistance program.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §§15.537 and 16.460. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and create a new flood financing program. The adopted rule would substantially advance this stated purpose by adopting new rules for flood financial assistance and guide applicants in the application process.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for flood mitigation and flood control projects.

Nevertheless, the board further evaluated the adopted rules and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

General Comments:

Various comments stressed the need for TWDB to strengthen public input requirements in the administration of the FIF by adopting rules similar to those governing the State Revolving Fund programs, which have clear public notice requirements for adoption and amendment of their annual Intended Use Plans. The comments urged TWDB to adopt rule language stating the executive administrator will hold public hearings for review and comment on the Flood Intended Use Plan and Prioritization List, as well as on any substantive amendments resulting therefrom.

(Commenters: Sierra Club-Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance (Texas Living Waters Project); Bayou Land Conservancy; Texas Land Trust Council; Katy Prairie Conservancy; Bayou Preservation Association)

Response: The TWDB appreciates these comments. Pursuant to these comments, a new section 363.403 was added to outline the public input requirements for the Flood Intended Use Plan.

Bexar Regional Watershed Management commented in support of the proposed rules' watershed approach.

Response: The TWDB appreciates this comment.

Senator Charles Perry commented that it is critical to assist rural communities where the application process may be a burden or fall short of qualifications. Hidalgo County Drainage District #1 requested a fund to assist communities with developing applications.

Response: The TWDB appreciates this comment. The TWDB appreciates this comment and would like to remind all applicants that the costs of preparing an application are an eligible expense for FIF program financing. The TWDB will also hold financial assistance workshops to help communities in navigating the application process.

Senator Zaffirini, Senator Campbell, and Representative Kuempel voiced their support for comments submitted by the Guadalupe Blanco River Authority.

Response: The TWDB appreciates this comment. It was considered as the TWDB reviewed the comments submitted by the Guadalupe Blanco River Authority.

The Texas Concrete Pipe Association suggested adding a resiliency standard for materials in order to be eligible for funding.

Response: The TWDB appreciates this comment. No changes were made to the rules pursuant this comment.

Comments on 31 TAC §363.401: Scope of Subchapter D

The Cities of Brookshire, Clute, and Lake Jackson stated that Section 363.401 of the draft rules provides that Subchapter D governs programs related to the FIF and the TIRF, but many of the rules appear to only consider the FIF.

Response: The TWDB appreciates these comments. These rules are only intended to govern the TWDB's provision of financial assistance to communities for flood projects. The language from Texas Water Code, Chapter 16, Subchapter L that was not addressed in these rules relates to programs administered by other agencies or money to be directly spent by the TWDB.

The Orange County Drainage District commented that the draft rules and Flood IUP prevent some areas from accessing grant funds although they would be considered rural by standards outlined in other sections of the Water Code, particularly those that happen to be located within MSAs.

Response: The TWDB appreciates this comment. The comment will be addressed in the Flood Intended Use Plan.

Comments on 31 TAC §363.402: Definitions

The North Central Texas Council of Governments commented that the definition of an "Eligible Political Subdivision" indicates that Councils of Government are not eligible and seeks clarification.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as the term is explicitly defined in statute. Councils of Governments may be eligible for flood funding other than the FIF or TIRF. This issue is further addressed in the Flood Intended Use Plan.

The Texas Water Conservation Association, Guadalupe Blanco River Authority, and Trinity River Authority recommend including acquisition within the definition of "flood project." El Paso County also commented that the Flood IUP refers to the use of funds for land acquisition, but the rules do not include acquisition. El Paso County commented that the rules should state that funds may be used where buyout costs are lower than constructing infrastructure.

Response: The TWDB appreciates these comments. No changes were made to the rules pursuant to these comments, but the eligibility of acquisition necessary for a project will be further clarified in the Flood Intended Use Plan.

The Harris County Flood Control District suggests the definition of "flood control" should include references to improvements made to the flow of water.

Response: The TWDB appreciates these comments. No changes were made pursuant to this comment.

The Harris County Flood Control District recommends changing "Project Watershed" to "Service Area."

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as relevant statutes refer to the "watershed" of the project.

The Harris County Flood Control District suggests including improvements to ancillary systems such as local drainage and underground conduits needed to bring stormwater to the receiving stream or bayou in the definition of structural flood mitigation.

Response: The TWDB appreciates this comment. No changes were made to the rule pursuant to this comment but eligibility of ancillary systems will be further clarified in TWDB guidance and the Flood Intended Use Plans.

The City of Houston commented that special purpose districts within Harris County should not be considered eligible political subdivisions.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as the term is explicitly defined in statute.

Parkhill Smith & Cooper commented that the definition of "project watershed" may be unnecessarily cumbersome if it means requiring modeling of no implementation alternates downstream to demonstrate downstream benefits. This could greatly increase the cost of modeling for entities located in rural areas that do not already have downstream modeling. They also request clarification of "substantially affected."

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment. As the financial assistance program is further developed, "substantially affected" may be further clarified.

The American Society of Civil Engineers suggests adjustments to definitions of drainage, flood control, flood mitigation, flood project, and nonstructural flood mitigation to help define project eligibility and more clearly articulate the types of projects eligible to receive assistance.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment.

The Guadalupe Blanco River Authority commented that the definitions of drainage, flood mitigation, and flood control are overlapping and do not define each project type.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment.

The Guadalupe Blanco River Authority, Texas Water Conservation Association, and Trinity River Authority propose clarified definitions of nonstructural and structural flood mitigation, with "rehabilitation" and "a federally authorized project to deepen a ship channel affected by a flooding event" included under the definition of "structural flood mitigation."

Response: The TWDB appreciates this comment. Clarification on the eligibility of rehabilitation has been added to the rule text. No changes were made pursuant to comments regarding deepening a ship channel, as that language is explicitly included in the statute. Points related to deepening a ship channel are further clarified in the Section by Section Analysis.

The Texas Living Waters Project, Texas Land Trust Council, Bayou Land Conservancy, and Katy Prairie Conservancy commented recommending that §363.402(6)(F) of the proposed rules be deleted. The comment states that such projects are eligible under the Texas Infrastructure Resiliency Fund created by Article 3 of Senate Bill 7 but are not included in the definition

of "flood project" found in Article 2 of Senate Bill 7, which created the Flood Infrastructure Fund (FIF). The Harris County Flood Control District suggested including criteria allowing ship channel improvements only to the extent that the improvement project has defined, measurable flood risk reduction benefits.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the statute explicitly includes "a federally authorized project to deepen a ship channel" in the definition of "flood project." Points related to deepening a ship channel are further clarified in the Section by Section Analysis. These rules are intended to apply to both the FIF and the TIRF.

The Texas Water Conservation Association, Trinity River Authority, and Guadalupe Blanco River Authority recommend clarifying changes, including the addition of "rehabilitation" in several subsections, "reservoirs" in the definition of "flood control," land rights acquisition in the definition of "flood project" and a modified definition of "nonstructural flood mitigation."

Response: The TWDB appreciates these comments. Clarification on the eligibility of rehabilitation has been added to the rule text. The definition of "flood control" was changed to include structural mitigation that retains water. No changes were made to the rules pursuant to the comments related to land rights acquisition, but the eligibility of acquisition necessary for a project will be further clarified in Flood Intended Use Plan. The definition of "nonstructural flood mitigation" was changed to explicitly include watershed planning, mapping, and acquisition of conservation easements.

The Trinity River Authority, Guadalupe Blanco River Authority, and Texas Water Conservation Association suggests defining "rural area."

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as the term is not used in the rules.

The Texas Water Infrastructure Network commented that TWDB should clarify what constitutes an "educational campaign," stating that utilization of FIF funds for activities such as public relations and advertising should be explicitly prohibited.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as detailed eligibility requirements such as this will be and analyzed on a project-by-project basis.

Ken Kramer commented in support of considering Annual Median Household Income and the Social Vulnerability Index in project eligibility and prioritization but suggests defining them in this section.

Response: The TWDB acknowledges and appreciates this comment. No changes were made pursuant to this comment as the terms are not used in the rules. These indexes are addressed in the Flood Intended Use Plan.

The Greater Houston Partnership and Houston Stronger suggested adding "necessary real estate interests" to the definition of flood project. The Harris County Flood Control District suggested including the ability to acquire property needed to construct the flood project as a permissible grant expense under 363.402(6)(C).

Response: The TWDB appreciates these comments. No changes were made to the rules pursuant to these comments, but the eligibility of acquisition necessary for a project will be further clarified in the Flood Intended Use Plan.

Environment Texas commented that TWDB should guarantee that at least 20% of FIF funds are set aside for nature-based projects.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment.

Comments on 31 TAC §363.403: Prioritization System (renumbered to 363.404)

The Harris County Flood Control District commented that if the Board decides to limit grant funds for any particular entity, that entity should be notified immediately in writing.

Response: The TWDB appreciates this comment. The TWDB staff will work to maintain open lines of communication with all applicants, borrowers, and grantees at all times.

Comments on 31 TAC §363.404: Use of Funds (renumbered to 363.405)

The Cities of Brookshire, Clute, and Lake Jackson commented that this section only lists the authorized use of funds included in Chapter 15, Subchapter I and does not include the list found under Chapter 16, Subchapter L.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the rules are intended to only apply to the Board's flood-related financial assistance programs, not other funding sources used directly by the TWDB or through other means.

The Texas Water Conservation Association suggests modifying Section 363.403(6) to clarify that program funds may be advanced to match "flood projects funded partially by federal money."

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as the language matches that used in statute.

Comments on 31 TAC §363.405: Terms of Financial Assistance (renumbered to 363.406)

The Cities of Brookshire, Clute, and Lake Jackson commented that Section 363.405 incorporates the 10-year deferral of payments on loans as set forth in Water Code section 15.534(b) for loans provided under FIF, and the same limitation is also present in Water Code section 16.454(g), related to the Hurricane Harvey subaccount administered by TDEM. Water Code section 16.453, however, does not include the same limitation on deferral of loan payments for loans under the Floodplain Management Account.

Response: The TWDB appreciates these comments. No changes were made pursuant to this comment as these rules are only intended to cover the TWDB's flood-related financial assistance programs, not those administered by TDEM or funds used directly by the TWDB.

The Cities of Brookshire, Clute, and Lake Jackson requested additional clarification on the manner in which TWDB will determine the amount and form of financial assistance and amount and form of repayment will be conveyed, in accordance with 363.405(b).

Response: The TWDB appreciates these comments. Further clarification on the amount and form of financial assistance and repayment is included in the Flood Intended Use Plan.

Comments on 31 TAC §363.406: Findings Required (renumbered to 363.407)

The Texas Water Conservation Association, Trinity River Authority, and Guadalupe Blanco River Authority suggest Sections 363.406(2) and (3) should incorporate the project watershed as the standard for regional engagement by the applicant. These suggestions were echoed by El Paso County.

Response: The TWDB appreciates these comments. No changes have been made to the rules as the language tracks the statute language.

The Texas Water Conservation Association, Trinity River Authority, and Guadalupe Blanco River Authority commented that TWDB should tailor Section 363.406 such that it does not apply to applications for watershed planning, flood mapping, and immediate life-saving measures. GBRA further commented that these requirements should not apply to flood warning systems or educational campaigns.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the statute states that the requirements apply to all applications.

The Texas Water Conservation Association and Trinity River Authority commented that these findings should clarify that all substantially affected eligible political subdivisions do not need to be co-applicants on the application.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments, but clarifications have been made to the Section by Section Analysis.

The Texas Water Conservation Association and Trinity River Authority commented that the findings should not require actual participation by all political subdivisions in the event that an eligible political subdivision elects not to participate.

Response: The TWDB appreciates these comments. Pursuant to these comments, the adopted rules recognize that providing adequate notice and ample opportunity to eligible political subdivisions that elect not to participate further would fulfill the requirement to have all substantially affected eligible political subdivisions participate in the process of developing a proposed flood project. This change will be made to new section §363.408(b)(2)(B) (§363.407(2)(B) in the proposed rules).

The City of Brenham submitted a comment seeking clarification of the term "Board Rules."

Response: The term "Board Rules" means the rules located at 31 Texas Administrative Code Part 10. As applicable to how this term is used in the adopted rules, this means 31 Texas Administrative Code Chapter 363, Subchapters A and Subchapter D.

The Texas Water Conservation Association, Trinity River Authority, and Guadalupe Blanco River Authority commented that the finding in 363.406(2) appears to be broader than what is required in statute. GBRA recommends changing this section to more closely track with Water Code Section 15.535(1) and adding a new section that tracks with Water Code Section 15.535(2). GBRA's comment recommends exempting nonstructural flood mitigation projects that will be immediately effective in protecting life and property from certain application requirements to remove impediments.

Response: The TWDB appreciates these comments. The adopted rules recognize that providing adequate notice and ample opportunity to eligible political subdivisions that elect not to participate further would fulfill the requirement to have all substantially affected eligible political subdivisions participate in the process of developing a proposed flood project. No changes have been made pursuant to the rules to exempt certain requirements explicitly required by statute for all applications.

Comments on 31 TAC §363.407: Application Requirements (renumbered to 363.408)

Numerous comments addressed the required Memorandum of Understanding (MOU) between political subdivisions in a project watershed. Senators Perry, Creighton, and Kolkhorst were among those recommending that TWDB revise the requirement, with several comments suggesting changes to better match Water Code section 15.005, which requires an agreement between all governing bodies of political subdivisions in a watershed. Various comments suggested that the MOU requirement would delay projects and that the timeline was too short. Comments submitted by the Texas Living Waters Project and Katy Prairie Conservancy suggest TWDB should have the ability to waive the requirement when an applicant can demonstrate that it creates an undue impediment to pursuing a meritorious project. Comments submitted by the City of Corpus Christi suggest a means by which political subdivisions may

opt out. Numerous commenters acknowledged the requirement is well-intended and support a watershed approach.

(Commenters: Sen. Perry; Sen. Kolkhorst; Sen. Creighton, Representative Toth, Representative Middleton, Gordy Bunch and Bruce Rieser (The Woodlands), Mark Keough (Montgomery County), Jimmy Sylvia (Chambers County), Mark Henry (Galveston County). Jeff Branick (Jefferson County); Walter Simms, Montgomery County MUD 84; Bexar Regional Watershed Management; Houston Stronger; Greater Houston Partnership; Harris County Flood Control District; City of Brookshire; City of Clute; City of Lake Jackson; Trinity River Authority; Texas Water Conservation Association; Maria Susana Dias; Texas Living Waters Project; Woodlands Water; City of Corpus Christi; Guadalupe Blanco River Authority)

Response: The TWDB appreciates these comments and has made changes pursuant to the comments. The adopted language will match the statutory language, as suggested in the comments. The adopted language will include the term "eligible political subdivisions." No changes have been made to the rule text pursuant to requests to allow a waiver, as this text does not appear in the statute language related to the MOU requirement.

Senator Perry suggested the MOU requirement be limited to entities affected directly by the project's footprint and to those entities that participate in flood control activities.

Response: The TWDB appreciates this comment. The adopted language will include the term "eligible political subdivisions" to limit the requirement to those entities eligible to receive financial assistance for flood control activities. The requirement is also limited to those entities within the project watershed.

The City of Houston commented that an MOU should not be required when evidence of successful partnership for project implementation has been or is displayed and that municipal staff acknowledgement could be an alternative to a formal MOU.

Response: The TWDB acknowledges and appreciates this comment. No changes were made pursuant to this comment as the statute explicitly requires an MOU in certain situations.

The Guadalupe Blanco River Authority commented that an MOU is only required if a portion of the project is located outside the political boundaries of the applicant and in the boundaries of another political subdivision. They suggest clarifying that the requirement only applies to "eligible political subdivisions" with "authority to engage in drainage, flood mitigation, and flood control activities" and who will be substantially affected by the flood project.

Response: The TWDB appreciates this comment and has made changes pursuant to the comment. The adopted language will match the statutory language, as suggested in the comment. The adopted language will include the term "eligible political subdivisions" to limit the requirement to those entities eligible to apply for financial assistance for flood projects. No changes have been made to the rule text pursuant to requests to further limit the requirement to those entities with authority to engage in drainage, flood mitigation, and flood control, as this text does not appear in the statute language related to the MOU requirement.

The Harris County Flood Control District suggested allowing a governing body's delegate to sign the MOU.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as the statute language explicitly requires the governing body to execute the MOU.

The Greater Houston Partnership and Houston Stronger commented that the MOU requirement should only apply to political subdivisions "substantially affected" by the project.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment as this language does not appear in the statute language.

The Hidalgo County Drainage District No. 1 and the Texas Living Waters Project suggested the MOU requirement should only apply to "eligible political subdivisions."

Response: The TWDB appreciates this comment and the suggested changes were made.

The Guadalupe Blanco River Authority recommended that nonstructural flood mitigation projects that will be immediately effective in protecting life and property be exempt from the MOU requirement.

Response: The TWDB appreciates this comment. The requirement only applies to "flood control projects," as defined in the rules as "the construction or rehabilitation of structural mitigation or anything that retains, diverts, redirects, impedes, or otherwise modifies the flow of water."

The American Society of Civil Engineers commented that the legislative intent can be achieved without the MOU requirement as currently written. They suggest requiring specific coordination steps at different stages of the application process, with an MOU included in loan closing documents. They suggest that this MOU should outline how state funding will be used and how project implementation will be shared among the participating political subdivisions.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment because the statute explicitly requires the MOU to be executed before the Board may consider an application.

Dr. Matthew Berg commented asking whether an MOU is sufficient evidence of cooperation and collaborative processes and inquiring how TWDB defines these terms. The Harris County Flood Control District suggested deleting the affidavit requirements in 363.407(2)(A) - (D) and only requiring the MOU to address cooperation and collaborative processes.

Response: The TWDB appreciates this comment. No changes were made pursuant to this comment in order to closely track the statute language.

The Texas Water Conservation Association and Trinity River Authority commented that the affidavit requirements of 363.407(2)(A) - (C) should only apply to eligible political subdivisions in the project watershed. Additionally, the TRA suggested this be further limited to only "substantially affected" political subdivisions. The Guadalupe Blanco River Authority also suggested use of "substantially affected" for (A) and (B) and "project watershed" for (B) and (C).

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the rule matches the statute language.

The Texas Water Conservation Association and Trinity River Authority suggested that the requirements in 363.407(2) and (3) should not apply to watershed planning, flood mapping, and measures immediately effective in protecting life and property. The Guadalupe Blanco River Authority echoed this comment as applicable to nonstructural flood mitigation projects.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the statute explicitly requires these elements for all applications.

The Texas Water Conservation Association and the Trinity River Authority commented suggesting that submittal of an updated description of the project watershed should only be required if the project results in the watershed increasing or decreasing in area by greater than 10%.

Response: The TWDB appreciates these comments. No changes were made to the rule as all changes will be assessed as part of project reviews.

Dr. Matthew Berg commented concern that a superficial consideration of technical requirements for 363.407(2)(D) could lead to the selection of suboptimal projects. He suggested clarification on the metrics to determine completeness and accuracy of a comparison.

Response: The TWDB appreciates this comment. No changes were made to the rules as the technical requirements will be further addressed in guidance on Engineering Feasibility Reports. As the program is further developed over time, this point may be clarified further.

The Harris County Flood Control District commented that studies previously conducted by the applicant should satisfy the requirement for an analysis of whether the proposed project could use floodwater capture techniques for water supply purposes.

Response: The TWDB appreciates this comment. As long as all statutory and rule elements are satisfied for the analysis required, the TWDB will not require new studies if studies have already been conducted.

The City of Brenham commented seeking clarification of the term "administratively complete."

Response: The TWDB appreciates this comment. An application is administratively complete when all elements are met and all questions answered fully.

Dr. Matthew Berg commented that TWDB should consider clarifying which requirements are needed at which time (i.e. abridged vs. full application.) The City of Sugarland commented requested clarification on whether the MOU must be submitted at the time of the abridged application or full application.

Response: The TWDB appreciates these comments. Further clarification has been added to the rules.

The Cities of Brookshire, Clute, and Lake Jackson suggested that the FIF application requirements conflict with the general application requirements found in Water Code chapter 15, subchapter A and rules chapter 363, subchapter A. These comments suggested using the language from Water Code §15.535 instead of §15.005.

Response: The TWDB appreciates these comments. Changes have been made to the rules to further clarify when the MOU is required.

The Cities of Brookshire, Clute, and Lake Jackson pointed out that public hearings are required for FIF projects but not for TIRF and suggested modifying language to specify this is only for flood control projects funded under FIF.

Response: The TWDB appreciates these comments. No changes were made pursuant to these comments as the rules are intended to only apply to the Board's flood-related financial assistance programs, not other funding sources used directly by the TWDB or through other means.

Comments submitted by the Texas Living Waters Project recommend additional requirements for applications to be determined Administratively Complete (with support from comments by the Texas Conservation Alliance and Katy Prairie Conservancy): (1) an analysis of how the proposed project will benefit those census tracts within the jurisdiction of the political subdivision that have an AMHI less than or equal to 75% of the statewide AMHI; (2) the Social Vulnerability Index (SVI) for each of the census tracts within the area of the political subdivision that will be affected by the implementation of the proposed flood project;" (3) if the application is for a structural flood mitigation project which does not incorporate nonstructural flood mitigation features into the project or as a complement to the project, an analysis that shows that reasonable nonstructural alternatives were explored and evaluated, including an explanation of why nonstructural features or components were not selected for the project;" and (4) an analysis of whether the project provides benefits additional to that of flood control or mitigation, including but not limited to water quality protection, fish and wildlife habitat maintenance or enhancement, public recreational opportunities, or some combination thereof."

Also recommended is an extension of proposed §363.407(3), with the additional suggested language in italics below: "(3) an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes, including floodwater harvesting, detention or retention basins, enhanced groundwater recharge, or other methods of capturing storm flow or unappropriated flood flow."

Response: The TWDB appreciates these comments. No changes were made to the rules in order to closely align with the statute language. The Flood Intended Use Plan does include additional consideration of elements such as the Social Vulnerability Index and AMHI of an applicant.

Comments on 31 TAC §363.408: Investment and Administration of Funds (renumbered to 363.409)

No public comments were received on this topic.

SUBCHAPTER D. FLOOD CONTROL

31 TAC §§363.401 - 363.404

STATUTORY AUTHORITY

The repeals are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

Chapters 15 and 16 of the Texas Water Code are affected by this repeal.

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

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SUBCHAPTER D. FLOOD FINANCIAL ASSISTANCE

31 TAC §§363.401 - 363.409

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.537 and 16.460, which require that the TWDB adopt rules necessary to carry out the affected subchapters.

Chapters 15 and 16 of the Texas Water Code are affected by this rulemaking.

§363.401. Scope of Subchapter D.

This subchapter shall govern the board's programs of flood financial assistance under the programs established by the Texas Water Code, Chapter 15, Subchapter I and Texas Water Code, Chapter 16, Subchapter L. Unless in conflict with the provisions in this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to projects under this subchapter.

§363.402. Definitions.

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

(1) Drainage--includes, but is not limited to, the construction or rehabilitation of bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect,

store, or treat the water, or divert the water into natural or artificial watercourses.

(2) Eligible political subdivision--a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a district or river authority that is subject to Chapter 49 of the Texas Water Code and participates in cooperative flood control planning, a municipality, or a county.

(3) Flood control--the construction or rehabilitation of structural mitigation or anything that retains, diverts, redirects, impedes, or otherwise modifies the flow of water.

(4) Flood mitigation--the implementation of actions, including both structural and nonstructural solutions, to reduce flood risk to protect against the loss of life and property.

(5) Flood Intended Use Plan--a document adopted by the board that identifies the uses of the funds for flood projects.

(6) Flood project--a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(D) construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(E) nonstructural or natural flood control strategies; and

(F) a federally authorized project to deepen a ship channel affected by a flooding event.

(7) Nonstructural flood mitigation--includes, but is not limited to, measures such as acquisition of floodplain land for use as public open space, acquisition and removal of buildings located in a floodplain, relocation of residents of buildings removed from a floodplain, flood warning systems, educational campaigns, land use planning policies, watershed planning, flood mapping, and acquisition of conservation easements.

(8) Metropolitan statistical area--an area so designated by the United States Office of Management and Budget.

(9) Project Watershed--the area upstream and downstream substantially affected by the proposed flood project, as documented in the project application and sealed by a Professional Engineer or Professional Geoscientist.

(10) Structural flood mitigation--includes, but is not limited to, measures such as construction of storm water retention basins, enlargement of stream channels, modification or reconstruction of bridges, coastal erosion control measures, or beach nourishment.

§363.403. Flood Intended Use Plan.

(a) Periodically, the board will adopt a Flood Intended Use Plan to determine the use of funds for applicable application periods. The Flood Intended Use Plan will include:

(1) eligibility criteria;

(2) structure of financial assistance, including any subsidies; and

(3) criteria to be used by the executive administrator in prioritization of applications.

(b) Before the board adopts a Flood Intended Use Plan or any substantive amendments thereto, the executive administrator will provide 30 days' notice and opportunity to comment.

§363.404. Prioritization System.

(a) The board will establish deadlines for application submittals. The executive administrator will provide the prioritization of those abridged applications to the board for approval as soon thereafter as practicable. The executive administrator will develop and provide an abridged application to gather information necessary for prioritization. To be considered for prioritization, an applicant must provide in the abridged application adequate information to establish that the applicant qualifies for funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the executive administrator. If an applicant submits an abridged application for prioritization purposes, the applicant must submit a complete application to the board by the deadline established by the executive administrator, or the project will lose its priority ranking and the board may commit to other projects consistent with the prioritization.

(b) For each abridged application that the executive administrator has determined has adequate information and is administratively complete for prioritization purposes and prior to each board meeting at which abridged applications may be considered for prioritization, the executive administrator shall:

(1) prioritize the applications by the criteria identified in the Flood Intended Use Plan; and

(2) provide to the board a prioritized list of all abridged applications as recommended by the executive administrator, the amount of funds requested, and the priority of each application received.

(c) The board will identify the amount of funds available for new applications, establish the structure of financing and the terms of any subsidy, and will consider applications in accordance with this title.

§363.405. Use of Funds.

(a) The board may use the funds for financial assistance to eligible political subdivisions as follows:

(1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;

(2) to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve an area outside of a metropolitan statistical area in order to ensure that the flood project is implemented;

(3) to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;

(4) to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;

(5) to make a grant to an eligible political subdivision for a flood project if the board determines that the eligible political subdivision does not have the ability to repay a loan;

(6) to meet matching requirements for projects funded partially by federal money; and

(7) to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early repayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

(b) The board may also use the fund to make transfers to the research and planning fund created under Texas Water Code Section 15.402, which may be used to provide money for flood control planning, as described in Texas Water Code Chapter 15, Subchapter F and 31 Texas Administrative Code Chapter 355.

(c) The board reserves the right to limit the amount of funding available to an individual entity.

§363.406. Terms of Financial Assistance.

(a) Principal and interest payments on loans at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project may be deferred for not more than 10 years or until construction of the flood project is completed, whichever is earlier.

(b) The board shall determine the amount and form of financial assistance and the amount and form of repayment.

(c) The board shall determine the method of evidence of debt.

(d) If the board determines non-performance on the terms of the grant, the board may require reimbursement of all or part of the funds provided by grant assistance or impose sanctions such as prohibition of further board financial assistance.

§363.407. Findings Required.

On review and recommendation by the executive administrator, the board may approve an application only if the board finds:

(1) the application and the assistance applied for meet requirements of this subchapter and board rules;

(2) the application demonstrates a sufficient level of cooperation among eligible political subdivisions and includes all of the eligible political subdivisions substantially affected by the flood project, as described in Section 363.408(b)(1) and (2), as applicable;

(3) the taxes or other revenue, or both the taxes and other revenue, pledged by the applicant will be sufficient to meet all the obligations assumed by the eligible political subdivision; and

(4) other findings as required in the Flood Intended Use Plan.

§363.408. Complete Application Requirements.

(a) This section applies to complete applications submitted to the executive administrator after prioritization.

(b) In addition to the general application requirements of Subchapter A of this chapter (relating to General Provisions), the following are required to be considered an administratively complete application:

(1) if the project is a flood control project and the project watershed is partially located outside the political subdivision making the application, the applicant must submit a memorandum of understanding relating to management of the project watershed. The memorandum of understanding must be approved and signed by all governing bodies of eligible political subdivisions located in the project watershed. The memorandum of understanding at a minimum, must contain a requirement that all political subdivisions in the project watershed agree to work cooperatively;

(2) an affidavit attesting to the following:

(A) that the applicant has acted cooperatively with other political subdivisions to address flood control needs in the area in which the eligible political subdivisions are located;

(B) that all eligible political subdivisions substantially affected by the proposed flood project have participated in the process of developing the proposed flood project, recognizing that providing adequate notice and ample opportunity to any such eligible political subdivision that elects not to participate further would fulfill this requirement, provided evidence of notification is included in the application;

(C) that the eligible political subdivisions, separately or in cooperation, have held public meetings to accept comment on proposed flood projects from interested parties; and

(D) that the technical requirements for the proposed flood project have been completed and compared against any other potential flood projects in the same area. This statement is not required for applications for assistance for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;

(3) an analysis of whether the proposed flood project could use floodwater capture techniques for water supply purposes, including floodwater harvesting, detention or retention basins, or other methods of capturing storm flow or unappropriated flood flow;

(4) a description of the Project Watershed sealed by a Professional Engineer or Professional Geoscientist. The Project Watershed shall be estimated using the best available data with analysis performed in accordance with sound engineering principles and practices. Revisions to the Project Watershed may be necessary with additional data, development of more refined modeling tools, refinement of design criteria, or other factors. The applicant must provide the executive administrator with updates of the description of the Project Watershed as it is modified. If a revision to the Project Watershed results in a portion of the project watershed being partially outside of the political subdivision boundaries of the Applicant, the Applicant must provide the executive administrator with additional memoranda of understanding necessary to include all eligible political subdivisions located in the project watershed; and

(5) additional information as needed to allow the board to comply with its responsibility to act as a clearinghouse for information about flood planning and its reporting requirements.

§363.409. Investment and Administration of Funds.

The investment and administration of funds shall be managed in accordance with the Board's investment policy, in accordance with State of Texas Comptroller guidelines, and the Public Funds Investment Act, Texas Government Code, Chapter 2257.

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 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.731

The Comptroller of Public Accounts adopts amendments to §3.731, concerning imposition and collection of the oil fee, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 865). The rule will not be republished.

The amendments incorporate legislative changes made under House Bill 2675, 86th Legislature, 2019, and Senate Bill 757, 84th Legislature, 2015. Also, the amendments add two references to the Tax Code, stating that purchasers and producers liable for the oil production tax must report the fee. The amendments delete a reference to the rate of the fee prior to September 1, 2001. The comptroller renames this section to include the name of the fee; the new title is "Oil-Field Cleanup Regulatory Fee on Oil."

In subsection (a), the comptroller identifies the taxpayers liable for the fee and the types of oil subject to the fee. The comptroller also removes the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (b) to remove the reference to Natural Resources Code, §81.111 (Tax Levy), repealed under Senate Bill 757, 84th Legislature, 2015; includes the title of Chapter 202; and explains that taxpayers report the fee on the crude oil tax report forms.

In subsection (c), the comptroller deletes the reference to the rate of the fee for crude oil produced prior to September 1, 2001, as this information is no longer necessary due to the passage of time. The comptroller deletes the word "taxable" as all barrels of oil are subject to this fee, except certain royalty interests exempt from oil occupation taxes and regulation pipeline taxes as stated in §3.34 of this title (Exemption of Certain Royalty Interest from Oil Occupation Taxes and Regulation Pipeline Taxes). The comptroller adds the words "each standard 42-gallon" as a measurement as stated in Natural Resources Code, §81.116 (Oil-Field Cleanup Regulatory Fee on Oil).

The comptroller deletes subsections (c)(2) and (3) due to House Bill 2675, which removes the suspension of the oil-field cleanup regulatory fees on oil when the balance of the fund exceeds a specific amount.

The comptroller renumbers subsection (c)(4) as new subsection (c)(2), includes a more descriptive title and makes minor edits to improve readability.

The comptroller adds language concerning assessment of penalty and interest in new subsection (d).

The comptroller adds subsection (e) concerning exemptions and reductions. The comptroller also adds language from Natural Resources Code, §81.116(d), to reflect that the exemptions and reductions set out in sections of the Tax Code do not affect the applicability of the fee on certain types of production listed under Natural Resources Code, §81.116(d).

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges that the comptroller administers under other law.

The amendments implement Natural Resources Code, §81.067 (Oil and Gas Regulation and Cleanup Fund) and §81.116 (Oil-Field Cleanup Regulatory Fee on Oil).

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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34 TAC §3.732

The Comptroller of Public Accounts adopts amendments to §3.732, concerning reporting requirements for the oil-field cleanup regulatory fee on natural gas imposed by Natural Resources Code, §81.117. The amended rule is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 866), and will not be republished.

The amendments incorporate statutory changes made by House Bill 2675, 86th Legislature, 2019. Also, the comptroller renames this section to include the name of the fee; the new title is "Oil-Field Cleanup Regulatory Fee on Natural Gas."

The comptroller makes minor grammatical and wording changes throughout the section to improve readability.

The comptroller amends subsection (a) to identify the entities who must pay the fee. The comptroller also removes the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (b) by making minor grammatical changes to improve the readability of the subsection, adding the title to the Tax Code cited, and identifying the tax form.

The comptroller amends subsection (c) to remove the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller deletes subsections (c)(2) and (3) due to House Bill 2675, 86th Legislature, 2019. House Bill 2675 removes the suspension of the oil-field cleanup regulatory fees on gas when the balance of the fund exceeds a specific amount.

The comptroller adds language concerning penalty and interest into new subsection (e).

The comptroller adds subsection (f), concerning exemptions and reductions. The comptroller also adds language from Natural Resources Code, §81.117(d)(Oil-Field Cleanup Regulatory Fee on Gas), to reflect that the exemptions and reductions set out in

sections of the Tax Code do not affect the applicability of the fee on certain types of production listed under Natural Resources Code, §81.117(d).

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges that the comptroller administers under other law.

The amendment implements Natural Resources Code, §81.067 (Oil and Gas Regulation and Cleanup Fund) and §81.117 (Oil-Field Cleanup Regulatory Fee on Gas).

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 10. TRANSPARENCY
SUBCHAPTER A. ANNUAL REPORT OF FINANCIAL INFORMATION BY POLITICAL SUBDIVISION

34 TAC §§10.1 - 10.6

The Comptroller of Public Accounts adopts amendments to §§10.1 - 10.6 concerning definitions; annual local debt report; annual local debt report form; reporting requirements; water district alternative; and comptroller procedures, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 867). The rules will not be republished. These rules are set forth under Title 34, Part 1, Chapter 10, Transparency, Subchapter A, Annual Report of Financial Information by Political Subdivision, and concern the comptroller's administration of a program to collect and publish financial and debt obligation information reported by political subdivisions pursuant to Local Government Code, §140.008. Section 140.008 governs the reporting of certain types of financial information by political subdivisions to the comptroller and the publication of that information by the comptroller on the comptroller's Internet website. The comptroller adopts these rule amendments to implement changes made to the law by the enactment of House Bill 3001, 86th Legislature, 2019 (amending Government Code, §403.0241 and Local Government Code, §140.008), relating to the fiscal transparency of special purpose districts and other political subdivisions. The comptroller intends for these amendments to streamline the reporting process and describe more options available to reporting entities for complying with reporting requirements.

To a large extent, these rule amendments implement statutory changes that eliminate a duplicative reporting requirement which resulted in some local governmental entities being required to report the same debt obligation data to the comptroller twice in one reporting year, in order to comply with two separate sets of statutory reporting requirements. This duplication occurred whenever the reporting entity met the relevant statutory criteria to be considered both a "political subdivision" subject to the local debt reporting requirements of Local Government Code, §140.008, as well as a "special purpose district" required to comply with the reporting requirements of Local Government Code, §203.062. With the enactment of House Bill 3001, and as described in these amendments to Chapter 10, entities required to report under Local Government Code, §203.062 (i.e., the more comprehensive of the two reporting schemes) no longer need to submit a certain portion of that information in a second (redundant) report to the comptroller. In other words, if an entity satisfies the threshold financial criteria described under Government Code, §403.0241(b) such that it must report the information required to be included in the Comptroller's Special Purpose District Public Information Database, under the rules as amended it is no longer required to also separately submit the information referenced in Government Code, §403.0241(c)(8) for the purposes of complying with Local Government Code, §140.008.

The rule amendments also implement certain other provisions of House Bill 3001 by describing newly authorized alternative reporting options, updating comptroller requirements prescribing the form and manner in which information and reports are submitted; posting reported information, electronic links to information, and other relevant or necessary information on the comptroller's Internet website; and facilitating compliance with applicable technical accessibility standards and specifications established in the electronic and information resources accessibility policy adopted by the comptroller under other law. The rule amendments more closely conform the language used in the rules to corresponding statutory language, reflect current agency practices relating to the collection and publication of financial and debt obligation information, and make non-substantive changes for clarity and readability. Throughout the subchapter, the comptroller amends rule titles and also amends cross-references accordingly. The comptroller does not intend to make substantive changes through these amendments to rule titles and through the amendments to cross-references.

The comptroller amends §10.1(1) to provide a definition of "affidavit of financial dormancy" that is more consistent with the description of the same provided under Water Code, §49.197. The comptroller amends paragraph (13) to state that the definition of a "political subdivision" for the purposes of this subchapter will not include a special purpose district described by Government Code, §403.0241(b).

The comptroller amends §10.2 to update the title of this section.

The comptroller amends §10.3 to update the title of this section and to clarify that, while the comptroller will no longer provide copies of forms to be completed and submitted by reporting entities, those entities may instead submit any required or requested information directly to the comptroller via the agency's website, in accordance with instructions to be provided by the comptroller.

The comptroller amends §10.4 to update the title of this section, and to describe debt reporting requirements generally applicable to political subdivisions under this subchapter. The amendments to this section state that a political subdivision that elects to post a report of its financial information on its own Internet website in lieu of submitting its information to the comptroller for posting on the comptroller's website shall provide upon request by the comptroller an electronic link to the location on the political subdivision's website where the information can be viewed. The comptroller's objectives in requesting this information are to promote financial transparency and public awareness of government financial activities, and to maintain a robust and accurate database of local debt information for the use and benefit of the public.

Similarly, and in furtherance of the same objectives, the comptroller amends §10.5 to update the title of the section and to identify requirements for annual debt reporting applicable to political subdivisions considered to be districts described under Water Code, §49.001. The amendments to this section state that a district of that type that elects to post a report of its financial information on its own Internet website, or make it available for public inspection at a regular office of the district, in lieu of submitting its information to the comptroller for posting on the comptroller's website shall provide upon request by the comptroller an electronic link to the location on the district's website where the information can be viewed, if applicable, or shall affirm and acknowledge that the documents have otherwise been made available for public inspection at the district office.

The comptroller amends §10.6 setting forth the comptroller's duties under this subchapter, including requirements that the comptroller receive and post financial information, documents and other information submitted by local governments pursuant to these rules, as well as other information the comptroller considers relevant or necessary for its purposes, on the comptroller's website, and make this information easily searchable by the public. The amendments to this section also clarify that the comptroller is authorized to reject, and authorized to decline to post on its website, information submissions that do not comply with comptroller requirements or with certain accessibility standards and specifications set forth in the comptroller's electronic and information resources accessibility policy.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Local Government Code, §140.008(d), (e), and (h), which authorize the comptroller to adopt rules necessary for the implementation of Local Government Code, §140.008(d), (e), (g), and (h).

The amendments implement Local Government Code, §140.008.

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 March 16, 2020.

TRD-202001142

Don Neal

Chief Counsel, Operations and Support Legal Services Division

Comptroller of Public Accounts

Effective date: April 5, 2020

Proposal publication date: February 7, 2020

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) adopts amendments to §4.12, concerning Exemptions and Exceptions. This rule is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 873). The rule will not be republished.

The adopted amendments harmonize updates to 49 CFR with those laws adopted by Texas. The Federal Motor Carrier Safety Administration granted an exemption for interstate drivers of waste and recycle vehicles utilizing the short term hours of service exemption. This exemption allows them to return to their primary work-reporting location within 14 hours instead of the previous rule of 12 hours. This amendment adopts this same exemption for intrastate waste and recycling vehicle drivers.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 March 12, 2020.

TRD-202001086

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: April 1, 2020

Proposal publication date: February 7, 2020

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

♦ ♦ ♦

37 TAC §4.21

The Texas Department of Public Safety (the department) adopts amendments to §4.21, concerning Report of Valid Positive Result on Alcohol and Drug Test. This rule is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 875) and will not be republished.

The Federal Motor Carrier Safety Administration requires carriers to submit valid positive results on alcohol and drug tests. Code of Federal Regulations, Title 49, Part 40 (adopted in Texas Administrative Code, §4.12 of this title, relating to Exemptions and Exceptions) requires that these results be signed by a medical review officer. This signature allows for investigators to validate positive results during a compliance review or safety audit. Currently, §4.21 does not specify "signed." The adopted change harmonizes the Texas Administrative Code with CFR Part 40 and makes the requirement clear for both industry and enforcement personnel. Additional, nonsubstanive changes have been made to the rule text for clarity.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 March 12, 2020.

TRD-202001087
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 1, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-5848


Texas

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

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. Subchapter B of Chapter 83 contains Division 1, concerning General Provisions; Division 2, concerning Authorized Activities; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Operational Requirements; and Division 6, concerning Consumer Disclosures and Notices.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules 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 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202001108
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: March 13, 2020

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The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers. Subchapter B of Chapter 84 contains Division 1, concerning Registration Procedures and Division 2, concerning Operational Requirements.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules 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 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202001109
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: March 13, 2020

♦ ♦ ♦

Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) files this notice of its intent to review Chapter 82, concerning Internal Board Procedures, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Board as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Comments on the review may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701; via email: rules@tbce.state.tx.us; or fax: (512) 305-6705. The Board must receive comments no later than 30 days from the date that this review is published in the *Texas Register.* Please include the chapter name and number (Chapter 82 - Internal Board Procedures) in the subject line of any comments submitted by email.

TRD-202001090
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Filed: March 12, 2020

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities; and Subchapter BB, Commissioner's Rules Concerning Provisions for Career and Technical Education, pursuant to the Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 75, Subchapters AA and BB, in the February 15, 2019 issue of the *Texas Register* (44 TexReg 717).

Relating to the review of 19 TAC Chapter 75, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter AA. At a later date, TEA plans to update rules related to driver education teachers and teaching assistants.

Relating to the review of 19 TAC Chapter 75, Subchapter BB, TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter BB. At a later date, TEA plans to update the rules in Subchapter BB to reflect Perkins V language and requirements and align with current standards.

This concludes the review of 19 TAC Chapter 75.

TRD-202001130
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 13, 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.

State-Listed Threatened Species in Texas

MAMMALS
Louisiana Black Bear (*Ursus americanus luteolus*)
Black Bear (*Ursus americanus*)
White-nosed Coati (*Nasua narica*)
Spotted bat (*Euderma maculatum*)
Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*)
Texas Kangaroo Rat (*Dipodomys elator*)
Coues' Rice Rat (*Oryzomys couesi*)
Palo Duro Mouse (*Peromyscus truei comanche*)
Tawny-bellied Cotton Rat (*Sigmodon fulviventer*)
Gervais' Beaked Whale (*Mesoplodon europaeus)*
Goose-beaked Whale (*Ziphius cavirostris*)
Pygmy Sperm Whale (*Kogia breviceps*)
Dwarf Sperm Whale (*Kogia simus*)
Killer Whale (*Orcinus orca*)
False Killer Whale (*Pseudorca crassidens*)
Short-finned Pilot Whale (*Globicephala macrorhynchus*)
Pygmy Killer Whale (*Feresa attenuata*)
Atlantic Spotted Dolphin (*Stenella frontalis*)
Rough-toothed Dolphin (*Steno bredanensis*)
West Indian Manatee (*Trichecus manatus*)

BIRDS
Common Black-hawk (*Buteogallus anthracinus*)
Gray Hawk (*Buteo plagiatus*)
White-tailed Hawk (*Buteo albicaudatus*)
Zone-tailed Hawk (*Buteo albonotatus*)
Peregrine Falcon (*Falco peregrinus anatum*)
Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)
Mexican Spotted Owl (*Strix occidentalis lucida*)
Piping Plover (*Charadrius melodus*)
Reddish Egret (*Egretta rufescens*)
White-faced Ibis (*Plegadis chihi*)
Wood Stork (*Mycteria americana*)
Swallow-tailed Kite (*Elanoides forficatus*)
Sooty Tern (*Onychoprion fuscatus)*
Northern Beardless-tyrannulet(*Camptostoma imberbe*)
Rose-throated Becard (*Pachyramphus aglaiae*)
Tropical Parula *Setophaga pitiayumi*
Bachman's Sparrow (*Peucaea aestivalis)*

Texas Botteri's Sparrow (*Peucaea botterii texana)*
Arizona Botteri's Sparrow (*Peucaea botterii arizonae)*
Black Rail (*Laterallus jamaicensis*)
Red-crowned Parrot (*Amazona viridigenalis*)
Rufa Red Knot (*Calidris canutus rufa*)

REPTILES
Green Sea Turtle (*Chelonia mydas*)
Loggerhead Sea Turtle (*Caretta caretta*)
Alligator Snapping Turtle (*Macrochelys temminckii*)
Cagle's Map Turtle (*Graptemys caglei*)
Chihuahuan Mud Turtle (*Kinosternon hirtipes murrayi*)
Texas Tortoise (*Gopherus berlandieri*)
Texas Horned Lizard (*Phrynosoma cornutum*)
Mountain Short-horned Lizard (*Phrynosoma hernandesi*)
Scarlet Snake (*Cemophora coccinea copei, C. c. lineri*)
Black-striped Snake (*Coniophanes imperialis*)
Speckled Racer *Drymobius margaritiferus*)
Northern Cat-eyed Snake (*Leptodeira septentrionalis septentrionalis*)
Louisiana Pine Snake (*Pituophis ruthveni)*
Brazos Water Snake (*Nerodia harteri*)
Trans-Pecos Black-headed Snake (*Tantilla cucullata*)

AMPHIBIANS
Salado Springs Salamander (*Eurycea chisholmensis*)
San Marcos Salamander (*Eurycea nana*)
Georgetown Salamander (*Eurycea naufragia*)
Texas Salamander (*Eurycea neotenes*)
Blanco Blind Salamander (*Eurycea robusta*)
Cascade Caverns Salamander (*Eurycea latitans*)
Jollyville Plateau Salamander (*Eurycea tonkawae*)
Comal Blind Salamander (*Eurycea tridentifera*)
Black-spotted Newt (*Notophthalmus meridionalis*)
South Texas Siren (large form) (*Siren* sp.1)
Mexican Tree Frog (*Smilisca baudinii*)
White-lipped Frog (*Leptodactylus fragilis*)
Sheep Frog (*Hypopachus variolosus*)
Mexican Burrowing Toad (*Rhinophrynus dorsalis*)

FISHES
Shovelnose Sturgeon (*Scaphirhynchus platorynchus*)
Paddlefish (*Polyodon spathula*)

Oceanic Whitetip (*Carcharhinus longimanus*)
Great Hammerhead (*Sphyrna mokarran*)
Shortfin Mako (*Isurus oxyrinchus*)
Mexican Stoneroller (*Campostoma ornatum*)
Rio Grande Chub (*Gila pandora*)
Blue Sucker (*Cycleptus elongatus*)
Creek Chubsucker (*Erimyzon oblongus*)
Toothless Blindcat (*Trogloglanis pattersoni*)
Widemouth Blindcat (*Satan eurystomus*)
Conchos Pupfish (*Cyprinodon eximius*)
Pecos Pupfish (*Cyprinodon pecosensis*)
Rio Grande Darter (*Etheostoma grahami*)
Blackside Darter (*Percina maculata*)
River Goby (*Awaous banana*)
Mexican Goby (*Ctenogobius claytonii*)
San Felipe Gambusia (*Gambusia clarkhubbsi*)
Blotched Gambusia (*Gambusia senilis*)
Devils River Minnow (*Dionda diaboli*)
Arkansas River Shiner (*Notropis girardi)*
Bluehead Shiner (*Pteronotropis hubbsi*)
Chihuahua Shiner (*Notropis chihuahua*)
Bluntnose Shiner (*Notropis simus*)
Proserpine Shiner (*Cyprinella proserpina*)
Tamaulipas Shiner (*Notropis braytoni*)
Rio Grande Shiner (*Notropis jemezanus*)
Headwater Catfish (*Ictalurus lupus*)
Speckled Chub (*Macrhybopsis aestivalis*)
Prairie Chub (*Macrhybopsis autralis*)
Peppered Chub (*Macrhybopsis tetranema*)
Chub Shiner (*Notropis potteri*)
Red River Pupfish (*Cyprinodon rubrofluviatilis*)
Plateau Shiner (*Cyprinella lepida*)
Roundnose Minnow *(Dionda episcopa*)
Medina Roundnose Minnow (*Dionda nigrotaeniata*)
Nueces Roundnose Minnow (*Dionda serena*)
Guadalupe Darter (*Percina apristis*)

AQUATIC INVERTEBRATES
False Spike (*Fusconia mitchelli*)
Louisiana Pigtoe (*Pleurobema riddellii*)
Mexican Fawnsfoot (*Truncilla cognata*)
Salina Mucket (*Potamilus metnecktayi*)

Sandbank Pocketbook (*Lampsilis satura*)
Southern Hickorynut (*Obovaria arkansasensis*)
Texas Fatmucket (*Lampsilis bracteata*)
Texas Fawnsfoot (*Truncilla macrodon*)
Texas Heelsplitter (*Potamilus amphichaenus*)
Texas Pigtoe (*Fusconaia askewi*)
Texas Pimpleback (*Cyclonaias petrina*)
Carolinae Tryonia (*Tryonia oasiensis*)
Caroline's Springs Pyrg *(Pyrgulopsis ignota*)
Clear Creek Amphipod (*Hyalella texana*)
Crowned Cavesnail (*Phreatodrobia coronae*)
Limpia Creek Springsnail (*Pyrgulopsis davisi*)
Metcalf's Tryonia (*Tryonia metcalfi*)
Presidio County Springsnail (*Pyrgulopsis metcalfi)*
Texas Troglobitic Water Slater (*Lirceolus smithii*)
Trinity Pigtoe (*Fusconaia chunii*)
Guadalupe Orb (*Cyclonaias necki*)
Guadalupe Fatmucket (*Lampsilis bergmanni*
Brazos Heelsplitter (*Potamilus streckersoni*)

large-fruited sand verbena (*Abronia macrocarpa*)

South Texas ambrosia (*Ambrosia cheiranthifolia*)

star cactus (*Astrophytum asterias*)

Texas ayenia (*Ayenia limitaris*)

Texas poppy-mallow (*Callirhoe scabriuscula*)

Terlingua Creek cat's-eye (*Cryptantha crassipes*)

black lace cactus (*Echinocereus reichenbachii* var. *albertii*)

Davis' green pitaya (*Echinocereus davisii*)

Nellie's cory cactus (*Escobaria minima*)

Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)

Guadalupe fescue (*Festuca ligulata*)

slender rush-pea (*Hoffmannseggia tenella*)

Texas prairie dawn (*Hymenoxys texana*)

Texas golden gladecress (*Leavenworthia texana*)

Walker's manioc (*Manihot walkerae*)

Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)

white bladderpod (*Physaria pallida*)

Zapata bladderpod (*Physaria thamnophila*)

Little Aguja pondweed (*Potamogeton clystocarpus*)

Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)

Navasota ladies'-tresses (*Spiranthes parksii*)

Texas snowbells (*Styrax platanifolius* ssp. *texanus*)

ashy dogweed (*Thymophylla tephroleuca*)

Texas wild-rice (*Zizania texana*)

31 TAC §69.8(b)

Leoncita false-foxglove (*Agalinis calycina*)

bunched cory cactus (*Coryphantha ramillosa* ssp. *ramillosa*)

dune umbrella-sedge (*Cyperus onerosus*)

Chisos Mountains hedgehog cactus (*Echinocereus chisosensis* var. *chisosensis*)

Lloyd's mariposa cactus (*Echinomastus mariposensis*)

small-headed pipewort (*Eriocaulon koernickianum*)

brush-pea (*Genistidium dumosum*)

earth fruit (*Geocarpon minimum*)

Pecos sunflower (*Helianthus paradoxus*)

Neches River rose-mallow (*Hibiscus dasycalyx*)

rock quillwort (*Isoetes lithophila*)

gypsum scalebroom (*Lepidospartum burgessii*)

Livermore sweet-cicely (*Osmorhiza bipatriata*)

Hinckley's oak (*Quercus hinckleyi*)

Houston daisy (*Rayjacksonia aurea*)

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.

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Rule 1.05, Texas Disciplinary Rules of Professional Conduct

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Rule 1.05. Confidentiality of Information

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through June 20, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rule will be held at 10:30 a.m. on June 18, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rule (Redline Version)

1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

***

Proposed Rule (Clean Version)

1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

***

TRD-202001124
Brad Johnson
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: March 13, 2020

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Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Rule 8.03. Reporting Professional Misconduct

Texas Rules of Disciplinary Procedure
Rule 1.06. Definitions
Rule 9.01. Orders From Other Jurisdictions (Reciprocal Discipline)

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rules. The Committee will accept comments concerning the proposed rules through June 20, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rules will be held at 10:30 a.m. on June 18, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rules (Redline Version)

Texas Disciplinary Rules of Professional Conduct

Rule 8.03. Reporting Professional Misconduct

***

(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

***

Texas Rules of Disciplinary Procedure

1.06. Definitions:

***

CC. "Professional Misconduct" includes:

***

2. Attorney conduct that occurs in another ~~state or in the District of Columbia~~ jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

***

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

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Proposed Rules (Clean Version)

Texas Disciplinary Rules of Professional Conduct

Rule 8.03. Reporting Professional Misconduct

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(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

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Texas Rules of Disciplinary Procedure

1.06. Definitions:

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CC. "Professional Misconduct" includes:

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2. Attorney conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

***

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

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TRD-202001125
Brad Johnson
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: March 13, 2020

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Brazos G Regional Water Planning Group

Notice to Public - Regional Water Planning

In accordance with §357.21 of the Texas Administrative Code, notice is hereby given that the Region G Regional Water Planning Group (Brazos G) will conduct a public hearing at **10:00 a.m., Wednesday, April 29, 2020,** at the Brazos River Authority Office, 4600 Cobbs Drive, Waco, Texas 76710.

The hearing's purpose is to receive oral and/or written comments regarding the content of the Initially Prepared Brazos G 2021 Regional Water Plan (IPP). No action on the IPP will be taken. Written comments will also be accepted from **March 30, 2020, until 5:00 p.m. on June 28, 2020,** via email at stephen.hamlin@brazos.org or can be mailed to:

Brazos River Authority

c/o Steve Hamlin

P.O. Box 7555

Waco, TX 76714-7555

A hard copy of the IPP is available at each of the following County Clerk's Office in Region G: **Bell, Bosque, Brazos, Burleson, Callahan, Comanche, Coryell, Eastland, Erath, Falls, Fisher, Grimes, Hamilton, Haskell, Hill, Hood, Johnson, Jones, Kent, Knox, Lampasas, Lee, Limestone, McLennan, Milam, Nolan, Palo Pinto,**

Robertson, Shackleford, Somervell, Stephens, Stonewall, Taylor, Throckmorton, Washington, Williamson and Young counties. A notice is posted at one public library in each of the Brazos G counties listed above with a web link to the IPP and accessible from the library's public computers. A list of designated county libraries and an electronic copy of the IPP is available for viewing on the Brazos G Water Planning Group website at www.brazosgwater.org. In addition, a printed copy is available for viewing at the Brazos River Authority office, 4600 Cobbs Drive, Waco, Texas 76710, during regular business hours.

Questions or requests for additional information should be directed to Steve Hamlin, Brazos G Administrator, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710. He can be reached by telephone at (254) 761-3172 or by e-mail at stephen.hamlin@brazos.org.

TRD-202001088
Stephen Hamlin
Administrative Agent for Brazos G
Brazos G Regional Water Planning Group
Filed: March 12, 2020

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2020

A 1 percent local sales and use tax will become effective April 1, 2020 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
South Frydek (Austin Co)	2008084	.015000	.077500

A 1 1/2 percent local sales and use tax will become effective April 1, 2020 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Beach City (Chambers Co)	2036026	.020000	.082500

The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2020 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bevil Oaks (Jefferson Co)	2123084	.020000	.082500
Mobile City (Rockwall Co)	2199056	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective April 1, 2020 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Campbell (Hunt Co)	2116092	.020000	.082500

An additional 1 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2020 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Tool (Henderson Co)	2107084	.020000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective March 31, 2020 and the 1 1/4 percent city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Ivanhoe (Tyler Co)	2229041	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective March 31, 2020 and the 1 percent city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Sunnyvale (Dallas Co)	2057244	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial developme as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduce to 1/4 percent effective March 31, 2020 and an additional 1/4 percent sales and use tax for Municipal Stre Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Port Neches (Jefferson Co)	2123075	.020000	.082500

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2020 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Caldwell County Emergency Services District No. 3-A	5028552	.002500	SEE NOTE 1
Smith County Emergency Services District No. 2-B	5212521	.002500	SEE NOTE 2

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2020 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Smith County Emergency Services District No. 2-A	5212512	.005000	SEE NOTE 3

A 1 percent special purpose district sales and use tax will become effective April 1, 2020 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Wilson County Emergency Services District No. 1	5247520	.010000	SEE NOTE 4

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2020 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Bexar County Emergency Services District No. 4	5015682	.015000	SEE NOTE 5
Caldwell County Emergency Services District No. 3	5028543	.015000	SEE NOTE 6
Gregg County Emergency Services District No. 2	5092508	.015000	SEE NOTE 7
Liberty County Emergency Services District No. 7-A	5146531	.015000	SEE NOTE 8
Smith County Emergency Services District No. 2	5212503	.015000	SEE NOTE 9

A 2 percent special purpose district sales and use tax will become effective April 1, 2020 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Fort Bend County Assistance District No. 16	5079649	.020000	SEE NOTE 10
Fort Bend County Assistance District No. 20	5079658	.020000	SEE NOTE 11

Hardin County Emergency Services District No. 4	5100526	.020000	SEE NOTE 12
Kaufman County Assistance District No. 2	5129532	.020000	SEE NOTE 13

NOTE 1: The Caldwell County Emergency Services District No. 3-A is the portion of the district located in the city of Martindale. Contact the district representative at 512-694-8044 for additional boundary information.

NOTE 2: The Smith County Emergency Services District No. 2-B is the portion of the district located in the city of Winona. Contact the district representative at 903-617-6578 for additional boundary information.

NOTE 3: The Smith County Emergency Services District No. 2-A is the portion of the district located in the cities of New Chapel Hill and Noonday. Contact the district representative at 903-617-6578 for additional boundary information.

NOTE 4: The Wilson County Emergency Services District No. 1 is located in the northern portion of Wilson County. The district excludes any area within the city of La Vernia. The unincorporated areas of Wilson County in ZIP Codes 78101, 78114, 78121, 78160 and 78161 are partially located within the Wilson County Emergency Services District No. 1. Contact the district representative at 281-373-1291 for additional boundary information.

NOTE 5: The Bexar County Emergency Services District No. 4 is located in the northwestern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district excludes any areas within the cities of San Antonio and Fair Oaks Ranch. The unincorporated areas of Bexar County in ZIP Codes 78006, 78015, 78255, 78256 and 78257 are partially located within the Bexar County Emergency Services District No. 4. Contact the district representative at 210-861-8643 for additional boundary information.

NOTE 6: The Caldwell County Emergency Services District No. 3 is located in the western portion of Caldwell County, which has a county sales and use tax. The district excludes the city of Martindale. The unincorporated areas of Caldwell County in ZIP Code 78655 are partially located within the Caldwell County Emergency Services District No. 3. Contact the district representative at 512-694-8044 for additional boundary information.

NOTE 7: The Gregg County Emergency Services District No. 2 is located in the eastern portion of Gregg County, which has a county sales and use tax. The unincorporated areas of Gregg County in ZIP Codes 75647 and 75662 are partially located within the Gregg County Emergency Services District No. 2. Contact the district representative at 903-986-1911 for additional boundary information.

NOTE 8: The Liberty County Emergency Services District No. 7-A is located in the east-central portion of Liberty County, which has a county sales and use tax. The district excludes the city of Hardin. The unincorporated areas of Liberty County in ZIP Codes 77327, 77369, 77575, 77561 and 77564 are partially located within the Caldwell County Emergency Services District No. 3. Contact the district representative at 512-694-8044 for additional boundary information.

NOTE 9: The Smith County Emergency Services District No. 2 is located in unincorporated portions of Smith County, which has a county sales and use tax, in ZIP Codes 75140, 75647, 75662, 75684, 75702, 75703, 75704, 75705, 75706, 75708, 75709, 75710, 75711, 75750, 75757, 75762, 75771, 75773, 75789, 75790, 75791 and 75792. The district excludes, for sales tax purposes, the cities of Arp, Bullard and Troup. The district boundaries do not include the cities of Lindale, Tyler, Whitehouse or Overton. Contact the district representative at 903-617-6578 for additional boundary information.

NOTE 10: The Fort Bend County Assistance District No. 16 is located in the south-central portion of Fort Bend County. The district excludes the city of Fairchilds or any other cities of special purpose districts. The unincorporated areas of Fort Bend County in ZIP Codes 77461 and 77469 are partially located within the Fort Bend County Assistance District No. 16. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 11: The Fort Bend County Assistance District No. 20 is located in the south-central portion of Fort Bend County. The district excludes the city of Needville or any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP Codes 77420, 77444 and 77461 are partially located within the Fort Bend County Assistance District No. 20. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 12: The Hardin County Emergency Services District No. 4 is located in the southwest portion of Hardin County. The unincorporated areas of Hardin County in ZIP Codes 77519 and 77564 are partially located within the Hardin County Emergency Services District No. 4. Contact the district representative at 936-402-4228 for additional boundary information.

NOTE 13: The Kaufman County Assistance District No. 20 is located in the east-central portion of Kaufman County. The unincorporated areas of Kaufman County in ZIP Code 75114 are partially located within the Kaufman County Assistance District No. 2. Contact the district representative at 469-376-4139 for additional boundary information.

TRD-202001126
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: March 13, 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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/23/20 - 03/29/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/23/20 - 03/29/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/20 - 04/30/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/20 - 04/30/20 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202001158
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 17, 2020

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Texas Dow Employees Credit Union (Lake Jackson) seeking approval to merge with Orange County Teachers Credit Union (Orange), with Texas Dow Employees Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202001175
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 18, 2020

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Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a place of business change was received from My Credit Union, Watauga, Texas. The credit union is proposing to change its domicile to 1090 School House Road, Ste. #300, Haslet, Texas, 76052.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202001177
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 18, 2020

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from First Central Credit Union, Waco, Texas, to expand its field of membership. The proposal would permit persons who reside, work, worship, or attend school within the boundaries of Falls County, Texas to be eligible for membership in the credit union to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202001174
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 18, 2020

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Associated Credit Union of Texas #1, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #2, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #3, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #4, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #5, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #6, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #7, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Associated Credit Union of Texas #8, League City, Texas - See *Texas Register* issue dated January 24, 2020.

Educators Credit Union, Waco, Texas - See *Texas Register* issue dated January 24, 2020.

Texell Credit Union, Temple, Texas - See *Texas Register* issue dated January 3, 2020.

Merger or Consolidation - Approved

Letourneau Federal Credit Union (Longview) and East Texas Professional Credit Union (Longview) - See *Texas Register* issue dated August 30, 2019.

TRD-202001173
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 18, 2020

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Texas Education Agency

Notice of Correction: Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

The following notice has been updated to reflect a change to the participation opportunities for public hearings.

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2020 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA Part B). The Texas Education Agency (TEA) is inviting public comment on its Proposed State Application under IDEA Part B. The annual grant application provides assurances that the state's policies and procedures in effect are consistent with the federal requirements to ensure that a free appropriate public education is made available to all children with a disability from 3 to 21 years of age, including children who have been suspended or expelled from school. 34 Code of Federal Regulations §300.165 requires that states conduct public hearings, ensure adequate notice of those hearings, and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures.

Availability of the State Application. The Proposed State Application is available on the TEA website at https://tea.texas.gov/academics/special-student-populations/special-education/programs-and-services/annual-state. Instructions for submitting public comments are available from the same site. The Proposed State Application will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application at the William B. Travis location should contact the TEA Division of Special Education at (512) 463-9414.

Procedures for Submitting Written Comments. The TEA will accept written comments pertaining to the Proposed State Application by mail to the TEA, Division of Special Education, 1701 North

Congress Avenue, Austin, Texas 78701-1494 or by email to spedrule@tea.texas.gov.

Participation in Public Hearings. The TEA will provide individuals with opportunities to testify on the Proposed State Application and the state's policies and procedures for implementing IDEA Part B on April 2, 2020, and April 3, 2020, between 1:00 p.m. and 4:00 p.m. at the TEA (1st floor, Room 1-111), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The public may participate in the hearing virtually by linking to the meeting at https://global.gotowebinar.com/pjoin/1142121407532061453/4265299579392626445. Parties interested in testifying must register online between 12:30 p.m. and 1:00 p.m. on the respective date and are encouraged to also include written testimony. The virtual meeting will be recorded. Public hearing information is available on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=2147493812.

Timetable for Submitting the State Application. After review and consideration of all public comments, the TEA will make necessary or appropriate modifications and will submit the State Application to the U.S. Department of Education on or before May 15, 2020.

For more information, contact the TEA Division of Special Education by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at spedrule@tea.texas.gov.

TRD-202001185
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 18, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 27, 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 **April 27, 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: ACME BRICK COMPANY; DOCKET NUMBER: 2019-0534-MWD-E; IDENTIFIER: RN102094802; LOCATION: Sealy, Austin County; TYPE OF FACILITY: brick manufacturer with a wastewater treatment lagoon; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013192001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Class D license or higher; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0013192001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $29,452; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-1499-PWS-E; IDENTIFIER: RN102689163; LOCATION: Ingram, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director and receive an approval prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: $1,620; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Braskem America, Incorporated; DOCKET NUMBER: 2019-1464-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: plastic materials and resin manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), Federal Operating Permit (FOP) Number O1424, 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; 30 TAC §101.201(c) and §122.143(4), FOP Number O1424, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 5572B, Special Conditions Number 1, FOP Number O1424, GTC and STC Number 11, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,180; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,072; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Brenntag Southwest, Incorporated; DOCKET NUMBER: 2019-1125-AIR-E; IDENTIFIER: RN100544675; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical and ingredient solutions distributor; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Number 3939, Special Conditions (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §116.115(c), NSR Permit

Number 3939, SC Number 2, and THSC, §382.085(b), by failing to comply with the tank throughput limit; PENALTY: $18,689; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,476; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-1228-WDW-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: specialty chemical and fuel production company and an underground injection control well; RULES VIOLATED: 30 TAC §331.64(d), 40 Code of Federal Regulations §146.67(f), and Underground Injection Control Permit Number WDW-068, Provision Number VIII.A, Monitoring and Testing Requirements, by failing to use and maintain continuous recording devices in proper operating conditions at all times; PENALTY: $8,100; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: City of Josephine; DOCKET NUMBER: 2019-1755-MWD-E; IDENTIFIER: RN109412700; LOCATION: Josephine, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010887002, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Kaufman; DOCKET NUMBER: 2018-1353-MLM-E; IDENTIFIER: RN102410461; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(b)(14)(ix), by failing to maintain authorization to discharge stormwater; 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012114001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TDPES Permit Number WQ0012114001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012114001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0012114001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; PENALTY: $36,650; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $29,321; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Knollwood; DOCKET NUMBER: 2019-1461-PWS-E; IDENTIFIER: RN102300324; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $50; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Corix Utilities (Texas) Incorporated; DOCKET NUMBER: 2019-1395-PWS-E; IDENTIFIER: RN101202778; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligram per liter (mg/L) for haloacetic acids, based on the locational running average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running average; PENALTY: $702; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Crest Metal Doors, Incorporated; DOCKET NUMBER: 2018-1702-AIR-E; IDENTIFIER: RN100851997; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: interior and exterior door manufacturer; RULES VIOLATED: 30 TAC §101.4 and §116.115(b)(2), New Source Review (NSR) Permit Number 28970, General Conditions (GC) Number 13, and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance dust conditions; 30 TAC §101.201(e) and §116.115(b)(2)(G), NSR Permit Number 28970, GC Number 9, and THSC, §382.085(b), by failing to submit an initial notification no later than 24 hours after the discovery of an excess opacity event; 30 TAC §111.111(a)(1)(B) and §116.115(c), NSR Permit Number 28970, Special Conditions (SC) Number 3, and THSC, §382.085(b), by failing to prevent an excess opacity event; and 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 28970, GC Number 7 and SC Numbers 14 and 15, and THSC, §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; PENALTY: $6,814; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: CROWN RECYCLING COMPANY; DOCKET NUMBER: 2019-1388-MLM-E; IDENTIFIER: RN105985147; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: municipal solid waste recycling facility; RULES VIOLATED: 30 TAC §205.6 and TWC, §5.702, by failing to pay outstanding General Permits stormwater fees, including any associated late fees, for TCEQ Financial Account Number 20041120; 30 TAC §281.25(a)(4), TWC, §26.121(a), and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; 30 TAC §328.5(b), by failing to submit a notice of intent to operate a municipal solid waste recycling facility at least 90 days prior to the commencement of recycling activities at the facility; and 30 TAC §328.5(f)(2)(B), (C), and (D), by failing to maintain all records necessary to show source-separation of materials received by the facility; PENALTY: $15,852; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: Debbie Sharp and Ronnie W. Sharp dba Chipper Point Apartments; DOCKET NUMBER: 2019-1506-PWS-E; IDENTIFIER: RN105068431; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; 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 of ten milligrams per liter for nitrate; and 30 TAC §290.117(c)(2)(A), (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, 2019 - June 30, 2019, monitoring period; PENALTY: $737; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL

OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: EAST MOUNT BUSINESS, LLC dba Roadwaze 2; DOCKET NUMBER: 2019-1318-PST-E; IDENTIFIER: RN109268227; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank recordkeeping requirements are met; PENALTY: $200; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2019-1295-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: an industrial organic chemical facility; RULES VIOLATED: 30 TAC §106.261(a)(7)(B) and §122.143(4), Permit by Rule (PBR) Registration Number 152239, Federal Operating Permit (FOP) Number O1436, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Form PI-7 by March 31st of the following year summarizing all uses of this PBR in the previous calendar year; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 48758, Special Conditions (SC) Number 1, FOP Number O1436, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 48758, SC Numbers 8.D (effective January 14, 2016) and 9.F (effective October 11, 2018), FOP Number O1436, GTC and STC Number 14, and THSC, §382.085(b), by failing to maintain the ratio of volume of natural gas to volume of waste gas for the flare; PENALTY: $93,713; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $37,485; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Edwards Construction; DOCKET NUMBER: 2019-1667-MWD-E; IDENTIFIER: RN101513000; LOCATION: Longview, Gregg County; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0014132001, Interim Effluent Limitations and Monitoring Requirements, by failing to comply with permitted effluent limitations; PENALTY: $10,938; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Geopolymer Solutions LLC; DOCKET NUMBER: 2019-1576-AIR-E; IDENTIFIER: RN110495561; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: cement and concrete blending plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Harris County Water Control and Improvement District 50; DOCKET NUMBER: 2019-1385-PWS-E; IDENTIFIER: RN101410504; LOCATION: El Lago, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.107(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.006 milligrams per liter for Di(2-ethylhexyl) phthalate (DEHP), based on the running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for DEHP; PENALTY: $351; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA; DOCKET NUMBER: 2018-1265-MLM-E; IDENTIFIER: RN101285245; LOCATION: Runaway Bay, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(e)(2)(C), by failing to designate the restricted zone around the intake structure with signs recounting the restrictions; 30 TAC §290.42(d)(5), by failing to provide flow-measuring devices to measure the treated water used to backwash the filters and the treated water discharged from the plant to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities; 30 TAC §290.42(d)(16), by failing to provide the surface water treatment plant with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director; 30 TAC §290.42(e)(4)(B), by failing to house gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; 30 TAC §290.42(f)(2), by failing to design chemical feed and metering facilities so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality; 30 TAC §290.46(e)(6)(A), by failing to use at least one operator who holds a Class B or higher surface water license who, if used part-time, is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class C or higher surface water license; 30 TAC §290.46(f)(2) and (3)(A)(i)(I), 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), by failing to maintain the facilities in such a way as to prevent conditions that might cause contamination of the water; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(2), by failing to conduct an annual visual inspection of the filter media and internal filter surfaces on the facility's two pressure filters to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces; 30 TAC §290.46(s), by failing to use accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal process; 30 TAC §290.46(s)(2)(A)(i), by failing to calibrate the benchtop pH meter according to manufacturer specifications at least once each day; 30 TAC §290.46(s)(2)(B)(iii), by failing to calibrate the on-line turbidimeter with primary standards at least once every 90 days; 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(s)(2)(C)(ii), by failing to check the accuracy of the continuous disinfectant residual analyzer at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method; 30 TAC §290.110(c)(1)(B) and (C), by failing to monitor and record the disinfectant residual of the water at each entry point with either a continuous monitor that records the disinfectant residual of the water every 30 minutes or two grab samples each day; 30 TAC §290.110(c)(4)(C), by failing to monitor the disinfectant residual at least once per day at representative locations in the distribu-

tion system; 30 TAC §290.111(e)(3)(D)(i), by failing to continuously monitor the turbidity of the combined filter effluent and record the turbidity value every 15 minutes; 30 TAC §290.111(e)(3)(D)(ii), by failing to measure and record the turbidity level at the effluent of each filter at least once each day the plant is in operation; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §305.42(a) and TWC, §26.121(a), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: $7,567; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: MB Chaparral, LLC; DOCKET NUMBER: 2019-1702-OSS-E; IDENTIFIER: RN104385695; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.3(a) and (b)(1) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating an on-site sewage facility; PENALTY: $750; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: Miller Environmental Services, LLC; DOCKET NUMBER: 2019-0632-IHW-E; IDENTIFIER: RN107648925; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: hazardous and industrial solid waste transport fleet depot; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: $30,000; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(21) COMPANY: Nerro Supply, LLC; DOCKET NUMBER: 2019-1466-MWD-E; IDENTIFIER: RN101613479; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.63(c) and §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011720001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011720001, Effluent Limitations and Monitoring Requirements Number 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), (4), and (5), TWC, §26.121(a)(1), and TDPES Permit Number WQ0011720001, Operational Requirements Number 1 and Permit Conditions Number 2.d, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: $3,564; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Performance Materials NA, Incorporated; DOCKET NUMBER: 2019-0878-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20204, Special Conditions Number 1, Federal Operating Permit Number O2055, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $14,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,700; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: RK Hall, LLC; DOCKET NUMBER: 2019-1124-AIR-E; IDENTIFIER: RN102885662; LOCATION: Denison, Grayson County; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.115(c), Standard Permit Registration Number 80986, Air Quality Standard Permit for Hot Mix Asphalt Plants, Special Conditions Number (1)(O), and Texas Health and Safety Code, §382.085(b), by failing to maintain the mix temperature of the asphalt at the discharge point of the drum at or below 325 degrees Fahrenheit; PENALTY: $1,063; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: SANR, INCORPORATED dba China Market; DOCKET NUMBER: 2019-1052-PST-E; IDENTIFIER: RN101763282; LOCATION: China, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated underground storage tank (UST) according to the UST registration and self-certification form; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.50(d)(1)(B)(iii)(II) and (9)(A)(iii), and TWC, §26.3475(c)(1), by failing to conduct inventory volume measurement utilizing equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch, and failing to take appropriate steps to assure that a Statistical Inventory Reconciliation (SIR) analysis report is received from the vendor in no more than 15 calendar days following the last of the 30-day period for which the SIR analysis is performed; PENALTY: $9,625; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: Ygriega Environmental Services, LLC; DOCKET NUMBER: 2019-1532-AIR-E; IDENTIFIER: RN107742637; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: used oil and used oil filter handling, transporter, and transfer facility; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: $12,375; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: Zuriya Business LLC dba Longview Food Mart; DOCKET NUMBER: 2019-1143-PST-E; IDENTIFIER: RN102453602; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of

operator - Class A, Class B, and Class C - for the facility; PENALTY: $5,940; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202001141
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 16, 2020

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Cancellation of Public Hearing Cactus Readymix, LLC; Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 159749

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public hearing previously scheduled for March 26, 2020, has been cancelled. **The public hearing will be rescheduled for a later date.** You will receive notice of the rescheduled public hearing by mail.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202001179
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

♦ ♦ ♦

Cancellation of Public Meeting AmeriTex Pipe & Products, LLC Air Quality Registration No. 159336

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for March 30, 2020, has been cancelled. **The public meeting will be rescheduled for a later date.** You will receive notice of the rescheduled public meeting by mail.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202001186
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Cancellation of Public Meeting Martin Marietta Materials Southwest, LLC Air Quality Permit No. 41849

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for March 23, 2020, has been cancelled. **The public meeting will be rescheduled for a later date.** You will receive notice of the rescheduled public meeting by mail.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202001178
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Cancellation of Public Meeting Silesia Properties, LP; Permit No. WQ0015835001

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for March 19, 2020, has been cancelled. **The public meeting will be rescheduled for a later date.** You will receive notice of the rescheduled public meeting by mail.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202001171
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Enforcement Orders

An agreed order was adopted regarding BIN ENTERPRISES INC, Docket No. 2017-1007-PST-E on March 17, 2020 assessing $5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ben 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 Judy K. Sharp dba Forest Oaks Mobile Home Park and William L. J. Sharp dba Forest Oaks Mobile Home Park, Docket No. 2018-1714-PWS-E on March 17, 2020 assessing $230 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001166
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40308

Application. Stericycle, Inc., 2355 Waukegan Road, Bannockburn, Illinois 60015 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40308, to construct and operate a medical waste processing facility. The proposed facility, Stericycle-Garland, will be located at 2821 Industrial Lane, Garland, Texas 75041, in Dallas County. The Applicant is requesting authorization to receive, store and process medical waste, non-hazardous

pharmaceuticals, and confidential documents; and store and transfer pathological waste, and trace chemotherapy waste. The registration application is available for viewing and copying at the Garland Central Public Library, 625 Austin Street, Garland, Texas 75040 and may be viewed online at https://www.lnvinc.com/wp-content/uploads/2020/02/Stericycle_Garland-Registration-Application-Submittal_January-2020.pdf. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.675833%2C32.881111&level=12 For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Stericycle, Inc. at the address stated above or by calling Mr. Mark Triplett, P.E., BCEE at (972) 931-2374.

Further information may also be obtained from Diversified Waste Management, Inc. at the address stated above or by calling Mr. Brandon Brown, Owner, at (806) 371-0120.

TRD-202001167
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Minor Amendment: Permit No. WQ0010984001

APPLICATION AND PRELIMINARY DECISION. Trinity River Authority of Texas, P.O. Box 240, Arlington, Texas 76004, has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010984001 to authorize the relocation of the outfall a short distance downstream. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 24,000,000 gallons per day. TCEQ received this application on July 8, 2019.

The facility is located at 1430 Malloy Bridge Circle in Dallas, County, Texas 75125. The treated effluent is discharged to Tenmile Creek; thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Tenmile Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.635012%2C32.564767&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.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the application. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

All written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk,

MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www14.tceq.texas.gov/epic/eComment/ **within 30 days of the date of publication of this notice in the *Texas Register.***

After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. **The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application.**

MAILING LIST. If you submit public comments, 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 below.

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.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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.

Further information may also be obtained from Trinity River Authority of Texas at the address stated above or by calling Ms. Patricia M. Cleveland, Executive Manager, Northern Region, Trinity River Authority of Texas, at (817) 493-5100.

Issuance Date: March 17, 2020

TRD-202001168
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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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 159968

APPLICATION. BHH Sand and Gravel, L.L.C., 7054 Pipestone, Schertz, Texas 78154-3209 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 159968 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 8182 Old Pearsall Road, San Antonio, Bexar County, Texas 78252. 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=29.309185&lng=-98.650846&zoom=13&type=r. This application was submitted to the TCEQ on February 4, 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 February 24, 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:

Monday, April 27, 2020, at 6 p.m.

Rio Medina Hall

8284 Old Pearsall Road

San Antonio, Texas 78252

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 Road, 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 BHH Sand and Gravel, L.L.C., 7054 Pipestone, Schertz, Texas 78154-3209, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: March 16, 2020

TRD-202001169
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Notice of District Petition

Notice issued March 11, 2020

TCEQ Internal Control No. D-12162019-017; Venture Anna 48, LLC (Petitioner) filed a petition and an amended petition for creation of Camden Parc Municipal Utility District of Rockwall County (District) with the Texas Commission on Environmental Quality (TCEQ). The amended petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code (TWC); 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The amended petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 322.35 acres located within Rockwall County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Rockwall, Texas. In accordance with Local Government Code §42.042 and TWC §54.016, the Petitioner submitted a petition to the City of Rockwall, requesting the City's consent to the creation of the District, followed by a petition for the City to provide water and sewer services to the District. The amended petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the amended petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $38,115,103 for water, wastewater, drainage and roads.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202001165
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Notice of District Petition

Notice issued March 12, 2020

TCEQ Internal Control No. D-01212020-024; HM Parkside LP, a Texas Limited Partnership by Hanna/Magee GP #1, Inc., a Texas Corporation, filed a petition for creation of Parkside on the River Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there is one lienholder on the land in the proposed District, First United Bank and Trust Company, and they have consented to the creation of the District; (3) the proposed District will contain approximately 272.512 acres located within Williamson County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Georgetown, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 082719 - W, passed and approved August 27, 2019, the City of Georgetown gave its consent to the creation of the proposed District, pursuant to Texas Water Code § 54.016. The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (a) the design, construction, acquisition, improvement, extension, financing, and issuance of bonds for: (i) a water works and sanitary sewer system for domestic and commercial purposes; (ii) works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (iii) park and recreational facilities; and (iv) such other additional facilities, systems, plants and enterprises are consistent with all of the purposes for which the District is created; and (b) the design, acquisition, construction, financing, and issuance of bonds for roads and improvements in aid of roads. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $29,885,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202001170
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2020

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Texas Facilities Commission

Request for Proposals (RFP) No. 303-1-20688

The Texas Facilities Commission (TFC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of Request for Proposals (RFP) No. 303-1-20688. TFC seeks a five (5) or ten (10) year lease of approximately **15,297** square feet of office space in Corpus Christi, Texas.

The deadline for questions is March 30, 2020, and the deadline for proposals is April 6, 2020, at 3:00 p.m. The award date is June 18, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/spdetails/view/303-1-20688.

TRD-202001084
AJ Wilson Salazar
General Counsel
Texas Facilities Commission
Filed: March 11, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 21, 2020 to March 12, 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, March 20, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, April 19, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Russell Marine LLC

Location: The project site is located in the San Jacinto River, at 16828 Market Street, in Channelview, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.784336, -95.099258

Project Description: The applicant is requesting to retain 655 linear feet of sheet pile bulkhead, and approximately 740 cubic yards of fill material, which was discharged into 0.72 acres of waters of the United States, below the mean high-tide line. This bulkhead and fill was placed without previous authorization from the United States Army Corps of Engineers. Additionally, the applicant proposes to dredge approximately 260,000 cubic yards of material from a 15.7-acre basin to an average depth of 12 feet, plus 2 feet of advance maintenance, for a total project depth of 14 feet, below mean lower low water. The applicant proposes to place the dredged material into the Adloy dredged material placement area. The applicant also requests authorization to perform maintenance dredging for a period of 10 years in the future.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2013-00799. 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: 20-1165-F1

Applicant: Port Isabel-San Benito Navigation District

Location: The project is located in the Port Isabel Turning Basin, at the Port Isabel port facility in Cameron County, Texas.

Latitude & Longitude (NAD 83): 26.060337, -97.213593

Project Description: The applicant proposes to conduct a 10-year maintenance dredging program for approximately 5.08-acres and dredge approximately 64,530 cubic yards of material by mechanical

and/or hydraulic dredging. The applicant is not proposing any changes to the previously authorized depth or to increase the project's footprint. The proposed final depth is -37 feet Mean Lower Low Water ((MLLW), NAVD 88). Best Management Practices (BMP's) would be installed prior to dredging as needed. Dredged material would be disposed of in the upland confined Brazos Island Harbor Project, Channel to Port Isabel's Placement Area #3.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2008-00408. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1163-F1

Applicant: Texas Parks and Wildlife Department

Location: The project site is located in East Galveston Bay, 200 feet off the existing shoreline near Smith Point, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.524914, -94.766581

Project Description: The applicant proposes to discharge 4,000 cubic yards of 18-inch graded rock in 0.70 acres of East Galveston Bay to facilitate the construction of a 2,500-linear-foot breakwater. The breakwater is proposed to be constructed in two sections to avoid placing rock on an existing underground pipeline. The smaller length of breakwater will be 186 feet in length and consist of approximately 298 cubic yards (CY) of 18-inch graded rock. The larger breakwater will be 2,314 linear feet and consist of approximately 3,702 CY of 18-inch graded rock. The crown will be set at an elevation of +3.5 NA VD88 with a width of 2-foot, a slope of 1.25:1 on the shoreline side, and a 1.5:1 on the bay side of the breakwater. The applicant is also proposing to install five day beacons consisting of a 10-inch-diameter by 25-foot-long timber post either driven or jetted into place with a 3-foot by 3-foot sign. The proposed 2,500-linear-foot breakwater is designed to reduce the impacts of wave energy on the shoreline and accrete sediments so that new fringe marsh habitat may be formed.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00096. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1171-F1

Applicant: City of Corpus Christi

Location: project is located adjacent to the Laguna Madre and in Redhead Pond, along Laguna Shores Road at Corpus Christi, Nueces County, Texas

Latitude & Longitude (NAD 83): Project site: 27.636966, -97.287671, Mitigation site: 27.641977, -97.287880

Project Description: The applicant proposes to fill approximately 1.32 acres of waters of the United States in association with raising and widening three sections of Laguna Shores Road to 12-foot-wide lanes with 4-foot shoulders. Segment 1 is from South Padre Island Drive to Graham Road. Segment 2 is from Hustlin Hornet to Caribbean Drive. Segment 3 is from Mediterranean Road to the south terminus. Areas directly adjacent to Section 10 waters would utilize interlocking pavers for slope stabilizations. These pavers have spaces that will be filled with sand and planted with native wetland plants. A living shoreline component is also included in Segment 1 near the intersection of Graham Road. This living shoreline will include construction of low-crested stone breakwaters and geotextile filter fabric with riprap consisting of 160 cubic yards of fill within a 0.134-acre footprint.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2006-01048. 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: 20-1177-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: Bureau of Ocean Energy Management (BOEM)

Project Description: BOEM proposes to offer for lease in proposed Gulf of Mexico (GOM) Region-wide Lease Sale 256 all available unleased blocks in the Western and Central Planning Areas (WPA and CPA, respectively), and a small portion of the Eastern Planning Area (EPA) not subject to Congressional moratorium. The proposed GOM region-wide lease sale area includes all available unleased blocks within the WPA, CPA, and EPA with the exception of whole blocks and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary. The final decision on whether and how to proceed with the lease sale and the lease blocks available for leasing will be announced in the Record of Decision and, if the decision is to proceed, a Final Notice of Sale. The proposed lease sale area may be smaller than the area considered herein, but BOEM is not planning for it to be larger than the area considered herein.

CMP Project No: 20-1168-F4

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-202001104
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: March 12, 2020

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Notice of Funds Availability - Texas Coastal Management Program

The General Land Office (GLO) and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce the §306/§306A federal grant funds provided by the National Oceanic and Atmospheric Administration to the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2021. The GLO, which oversees the implementation of the CMP with the advice of the CCAC, will pass through approximately 90% of the available §306/§306A funds to eligible entities to support projects that implement and/or advance the CMP goals and policies. Projects must be located within the coastal zone boundary established by the Texas Legislature in 1995.

The following entities are eligible to receive grants under the CMP.

--Incorporated cities within the coastal zone boundary

--County governments within the coastal zone boundary

--Texas state agencies

--Texas public colleges/universities

--Subdivisions of the state with jurisdiction within the coastal zone boundary (e.g., navigation districts, port authorities, river authorities, and soil and water conservation districts)

--Councils of governments and other regional governmental entities within the coastal zone boundary

--The Galveston Bay Estuary Program

--The Coastal Bend Bays and Estuaries Program

--Nonprofit Organizations that are registered as a 501(c)(3) and have an office located in Texas. Nonprofit organizations must be nominated by one of the eligible entities listed above. (A nomination must take the form of a resolution or letter from an official representative of the entity. The nominating entity is not expected to contribute financially or administratively to the management and implementation of the proposed project.)

The GLO and the CCAC will accept applications through a competitive pre-proposal process followed by an invitation-only final application submission. Projects must address at least one of the following funding categories:

--Public access enhancements to coastal natural resource areas;

--Data collection that fulfills a CCAC agency need;

--Coastal hazard and resiliency planning;

--Coastal resource improvements or enhancements; or

--Projects of special merit that showcase regional collaboration and large-scale improvements to coastal resources.

The GLO will hold three grant workshops to provide information on the grant program and allow potential applicants the opportunity to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged.

Rockport - May 5, 2020 at 9:30 a.m.

Bay Education Center

121 Seabreeze Drive

Rockport, Texas 78382

South Padre Island - May 7, 2020 at 9:30 a.m.

City Hall - Multi-Modal Facility

321 Padre Boulevard

South Padre Island, Texas 78597

Galveston - May 13, 2020 at 9:30 a.m.

Rosenberg Library - Wortham Auditorium

2310 Sealy Street

Galveston, Texas 77550

Please be sure to check the CMP website prior to attending the workshops to ensure they are still being held in light of COVID-19.

The requirements to receive federal grant funds are outlined in the CMP Cycle 26 application solicitation. The solicitation and application are available for download at http://www.glo.texas.gov/coast/grant-projects/funding/.

Applicants must register proposed projects 48 hours prior to the pre-proposal submission deadline. Applicants submitting more than one project must register each individual project. To be considered for funding, pre-proposals and final applications must be submitted electronically in accordance with submission procedures. Submission procedures will be provided to applicants following project registration.

Submission of a pre-proposal is required for all projects proposed for funding. Pre-proposals are due by 5:00 p.m. on June 10, 2020. Written comments will be provided to enhance the quality of the project for the final application or better align the project with CCAC member agency needs for future cycles. Applicants will receive notification of whether the project may be submitted as a final application. Upon invitation, applicants must submit final applications with supporting documentation by 5:00 p.m. on October 7, 2020.

TRD-202001106
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: March 12, 2020

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective April 1, 2020.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS);

Family Planning Services; and

Physicians and Other Practitioners.

The proposed amendments are estimated to result in an annual aggregate expenditure of $1,051,756 for federal fiscal year (FFY) 2020, consisting of $686,622 in federal funds and $365,134 in state general revenue. For FFY 2021, the estimated result in an annual aggregate expenditure of $2,146,512, consisting of $1,400,452 in federal funds and $746,060 in state general revenue. For FFY 2022, the estimated result in an annual aggregate expenditure of $2,192,038, consisting of $1,429,210 in federal funds and $762,828 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at http://rad.hhs.texas.gov/rate-packets.

Rate Hearing. For all proposed rate changes, a rate hearing was conducted on February 21, 2020, at 1:30 p.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing can be found in the February 7, 2020, issue of the *Texas Register* at pages 943-946. These can be found at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

Fax. Attention: Rate Analysis at (512) 730-7475

Email.

RADAcuteCare@hhsc.state.tx.us

TRD-202001154
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 17, 2020

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective February 4, 2020.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Outpatient Hospital;

Physicians and Other Practitioners;

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT); and

Clinical Diagnostic Laboratory.

The proposed amendments are estimated to result in an annual aggregate expenditure of $1,000,000 for federal fiscal year (FFY) 2020, consisting of $608,900 in federal funds and $391,100 in state general revenue. For FFY 2021, the estimated result in an annual aggregate expenditure of $1,548,379, consisting of $942,808 in federal funds and $605,571 in state general revenue. For FFY 2022, the estimated result in an annual aggregate expenditure of $1,565,566, consisting of $953,273 in federal funds and $612,293 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: http://rad.hhs.texas.gov/rate-packets.

Rate Hearing. For proposed rate changes a rate hearing was conducted on March 23, from 9:00 a.m. until 10:00 a.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing was published in the March 20, 2020, issue of the *Texas Register.* This notice can be found at http://www.sos.state.tx.us/texreg/index.shtml. It can also be found on HHSC's website at https://hhs.texas.gov/about-hhs/communications-events/meetings-events.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

Fax. Attention: Rate Analysis at (512) 730-7475

Email.

RADAcuteCare@hhsc.state.tx.us

TRD-202001181
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 18, 2020

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective March 18, 2020.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Outpatient Hospital;

Physicians and Other Practitioners;

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT); and

Clinical Diagnostic Laboratory.

The proposed amendments are estimated to result in an annual aggregate expenditure of $820,084 for federal fiscal year (FFY) 2020, consisting of $499,349 in federal funds and $320,735 in state general revenue. For FFY 2021, the estimated result in an annual aggregate expenditure of $1,548,379, consisting of $942,808 in federal funds and $605,571 in state general revenue. For FFY 2022, the estimated result in an annual aggregate expenditure of $1,565,566, consisting of $953,273 in federal funds and $612,293 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: http://rad.hhs.texas.gov/rate-packets.

Rate Hearing. For proposed rate changes a rate hearing was conducted on March 23, from 9:00 a.m. until 10:00 a.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing was published in the March 20, 2020, issue of the *Texas Register.* This notice can be found at http://www.sos.state.tx.us/texreg/index.shtml. It

can also be found on HHSC's website at https://hhs.texas.gov/about-hhs/communications-events/meetings-events.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-202001182
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 18, 2020

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of February, 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Houston	Stratum Reservoir L.L.C.	L07040	Houston	00	02/03/20
Shenandoah	Texas Oncology P.A.	L07041	Shenandoah	00	02/03/20
Throughout TX	Xcel NDT L.L.C.	L07039	Longview	00	02/03/20
Throughout TX	Midwest NDT Services L.L.C.	L07043	McAllen	00	02/12/20
Victoria	Performance Materials N.A. Inc.	L07038	Victoria	00	02/03/20
Webster	Angelcare Imaging L.L.C.	L07042	Webster	00	02/03/20

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Ascension Seton	L00268	Austin	171	02/12/20
Austin	Austin Radiological Association	L00545	Austin	226	02/05/20
Austin	St David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	169	02/04/20
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's South Austin Medical Center	L03273	Austin	121	02/07/20
Austin	ARA St David's Imaging L.P.	L05862	Austin	100	02/05/20
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	156	02/10/20
Carrollton	Baylor Medical Center at Carrollton dba Baylor Scott & White Medical Center - Carrollton	L06741	Carrollton	07	02/04/20
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	19	02/06/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Dallas Nephrology Associates dba Dallas Transplant Institute	L02604	Dallas	31	02/11/20
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	12	02/06/20
Dallas	Medworks of Alabama L.L.C.	L07023	Dallas	01	02/07/20
Del Rio	Val Verde Hospital Corporation dba Val Verde Regional Medical Center	L01967	Del Rio	41	02/06/20
DFW Airport	Sikorsky Aircraft Corporation	L06418	DFW Airport	05	02/10/20
El Paso	Rio Grande Urology P.A. dba Rio Grande Radiation Cancer Center	L06721		03	02/05/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	145	02/12/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	112	02/12/20
El Paso	el Paso Healthcare System Ltd dba Del Sol Medical Center	L02551	El Paso	79	02/07/20
El Paso	El Paso Healthcare System Ltd. dba Las Palmas Medical Center	L02715	El Paso	98	02/07/20
El Paso	Texas Oncology Pa dba El Paso Cancer Treatment Center - East	L05771	El Paso	13	02/14/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	33	02/12/20
Greenville	Hunt Memorial Hospital District	L01695	Greenville	56	02/03/20
Harlingen	Texas Oncology P.A. dba South Texas Cancer Center HARLINGEN	L00154	Harlingen	51	02/14/20
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	246	02/04/20
Houston	Harris County Hospital District dba Harris Health System	L01303	Houston	99	02/05/20
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	135	02/04/20
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	99	02/04/20
Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	68	02/12/20
Houston	GB Biosciences Corporation	L03521	Houston	29	02/06/20
Houston	Memorial Hermann Health System	L03772	Houston	159	02/04/20
Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06358	Houston	10	02/11/20
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06383	Houston	14	02/05/20
Houston	Memorial Hermann Medical Group Department of Radiation Therapy	L06430	Houston	36	02/05/20
Houston	Memorial Hermann Health System dba Memorial Hermann Cypress Hospital	L06832	Houston	19	02/04/20
Houston	Houston – PPH L.L.C. dba HCA Houston Healthcare Medical Center	L06878	Houston	03	02/14/20
Katy	WSSM L.L.C.	L07035	Katy	01	02/12/20
Lake Jackson	The Dow Chemical Company Texas Innovation Center - APB	L00451	Lake Jackson	108	02/03/20
McAllen	Columbia Rio Grande Healthcare L.P. dba Rio Grande Regional Hospital	L03288	McAllen	60	02/11/20
Plano	Heartplace P.A.	L05883	Plano	30	02/07/20
Plano	Orano Med L.L.C.	L06781	Plano	17	02/10/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

San Angelo	Shannon Medical Center	L02174	San Angelo	78	02/13/20
San Angelo	Shannon Clinic	L04216	San Angelo	60	02/13/20
Throughout TX	Desert NDT L.L.C. dba Shawcor	L06462	Abilene	43	02/06/20
Throughout TX	MLA Labs Inc.	L01820	Austin	38	02/10/20
Throughout TX	Rodriguez Engineering Laboratories L.L.C. dba Rodriguez Engineering Laboratories	L04700	Austin	24	02/05/20
Throughout TX	Globe Engineers Inc.	L05527	Dallas	06	02/03/20
Throughout TX	Critical Response Inspection Service L.L.C.	L06497	Dayton	04	02/10/20
Throughout TX	D&S Engineering Labs L.L.C.	L06677	Denton	16	02/04/20
Throughout TX	Professional Service Industries Inc.	L06169	Harker Heights	08	02/04/20
Throughout TX	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	180	02/05/20
Throughout TX	DAE & Associates Ltd dba Geotech Engineering and Testing	L03923	Houston	28	02/13/20
Throughout TX	Alliance Laboratories Inc.	L05586	Houston	07	02/04/20
Throughout TX	Nextier Completion Solutions Inc.	L06662	Houston	13	02/06/20
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	25	02/11/20
Throughout TX	JRB Engineering L.L.C.	L06689	Houston	06	02/06/20
Throughout TX	Nextier Completion Solutions Inc.	L06712	Houston	13	02/06/20
Throughout TX	Kleinfelder Inc.	L06960	Irving	02	02/04/20
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	12	02/10/20
Throughout TX	Pavetex Engineering L.L.C. dba Pavetex	L06407	Lubbock	17	02/05/20
Throughout TX	Shared Medical Services Inc.	L06142	Nacogdoches	35	02/04/20
Throughout TX	Liberty Oilfield Services L.L.C.	L06901	Odessa	05	02/12/20
Throughout TX	Rock Engineering and Testing Laboratory Inc.	L05168	San Antonio	19	02/05/20
Throughout TX	Pumpco Energy Services Inc.	L06507	Valley View	23	02/05/20
Throughout TX	Pumpco Energy Services Inc.	L06507	Valley View	24	02/13/20
Throughout TX	KLX Energy Services Holdings Inc.	L07002	Weatherford	02	02/12/20
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	76	02/06/20
Tyler	Delek Refining Ltd.	L02289	Tyler	31	02/03/20
Webster	Premier Cardiology Associates P.L.L.C.	L07006	Webster	01	02/03/20

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
College Station	TDI Brooks International Inc.	L06139	College Station	06	02/11/20
Dallas	Presbyterian Cancer Center - Dallas L.L.C.	L06056	Dallas	15	02/14/20
San Marcos	Adventist Health System/Sunbelt Inc. dba Central Texas Medical Center	L03133	San Marcos	36	02/14/20
Throughout TX	Reed Engineering Group Ltd..	L04343	Dallas	20	02/07/20
Throughout TX	Fargo Consultants Inc.	L05300	Dallas	19	02/11/20
Throughout TX	Bandy & Associates	L05402	Houston	05	02/10/20
Throughout TX	Howland Engineering and Surveying Company Inc.	L05543	Laredo	09	02/11/20

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Applied Rigaku Technologies Inc.	L06293	Austin	02	02/03/20

Houston	Signum Instruments Inc.	L06738	Houston	07	02/12/20
Round Rock	Gases 101 L.L.C.	L06767	Round Rock	04	02/11/20
Sugar Land	Jumeira Medical Consulting Group L.P.	L06776	Sugar Land	01	02/10/20

TRD-202001132
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: March 16, 2020

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Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by John Hellerstedt, M.D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register.*

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Unit, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.texas.gov/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

-Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);

(4) Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide) (Other name: acryloylfentanyl);

(5) AH-7921 (3,4-dichloro-N-[1-(dimethylamino) cyclohexymethyl]benzamide);

(6) Allylprodine;

(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);

(8) α-Methylfentanyl or any other derivative of fentanyl;

(9) α-Methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] N-phenylpropanamide);

(10) Benzethidine;

(11) β-Hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) β-Hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

*(13) β-hydroxythiofentanyl (Other names: N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylproprionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide);

(14) Betaprodine;

(15) Butyryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide);

(16) Clonitazene;

*(17) Cyclopropyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide);

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimethylthiambutene;

(23) Dioxaphetyl butyrate;

(24) Dipipanone;

(25) Ethylmethylthiambutene;

(26) Etonitazene;

(27) Etoxeridine;

(28) 4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: p-fluoroisobutyryl fentanyl);

(29) Furanyl fentanyl [N-(1-phenethylpiperdin-4-yl)-N-phenylfuran-2-carboxamide];

(30) Furethidine;

(31) Hydroxypethidine;

(32) Ketobemidone;

(33) Levophenacylmorphan;

(34) Meprodine;

(35) Methadol;

*(36) Methoxyacetyl fentanyl (2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);

(37) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N- phenylpropanamide);

(38) 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(39) Moramide;

(40) Morpheridine;

(41) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(42) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);

(43) Noracymethadol;

(44) Norlevorphanol;

(45) Normethadone;

(46) Norpipanone;

(47) Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide);

*(48) o-Fluorofentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl);

*(49) p-Fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);

(50) p-Fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4 piperidinyl] propanamide);

(51) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(52) Phenadoxone;

(53) Phenampromide;

(54) Phencyclidine;

(55) Phenomorphan;

(56) Phenoperidine;

(57) Piritramide;

(58) Proheptazine;

(59) Properidine;

(60) Propiram;

(61) Tetrahydrofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide);

(62) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(63) Tilidine;

(64) Trimeperidine; and

(65) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide.

-Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) α-Ethyltryptamine (Other names: etryptamine; Monase; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; AET);

(2) 4 Bromo 2,5 dimethoxyamphetamine (Other names: 4 bromo-2,5 dimethoxy-α-methylphenethylamine; 4 bromo 2,5 DMA);

(3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α-desmethyl DOB);

(4) 2,5 Dimethoxyamphetamine (Other names: 2,5 dimethoxy-α-methylphenethylamine; 2,5 DMA);

(5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);

(6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);

(7) 4 Methoxyamphetamine (Other names: 4 methoxy α-methylphenethylamine; paramethoxyamphetamine; PMA);

(8) 5 Methoxy 3,4 methylenedioxy-amphetamine;

(9) 4 Methyl 2,5 dimethoxyamphetamine (Other names: 4 methyl 2,5 dimethoxy-α-methyl phenethylamine; "DOM"; "STP");

(10) 3,4-Methylenedioxy-amphetamine;

(11) 3,4-Methylenedioxy-methamphetamine (Other names: MDMA; MDM);

(12) 3,4 Methylenedioxy-N ethylamphetamine (Other names: N ethyl-α-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(13) N-Hydroxy-3,4-methylenedioxyamphetamine (Other name: N-hydroxy MDA);

(14) 3,4,5-Trimethoxy amphetamine;

(15) 5-Methoxy-N,N-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(16) α-Methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(17) Bufotenine (Other names: 3-β-Dimethylaminoethyl)-5- hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: N,N-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-N,N-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6-β-7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga);

(22) Lysergic acid diethylamide;

(23) Marihuana. The term marihuana does not include hemp, as defined Title 5, Agriculture Code, Chapter 121.

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(32) Ethylamine analog of phencyclidine (Other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenylcyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

(37) 3,4-methylenedioxypyrovalerone (MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name: 2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);

(47) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone);

(48) (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(49) [1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(50) N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA; AKB48);

(51) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(53) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

(54) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other name: ADB-PINACA);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

(56) 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(57) 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant;

(59) 4-Methyl-N-ethylcathinone (4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (4-MePPP);

(61) α-Pyrrolidinopentiophenone ([α]-PVP);

(62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);

(63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);

(64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);

(65) 4-Fluoro-N-methylcathinone (Other names: 4-FMC; flephedrone);

(66) 3-Fluoro-N-methylcathinone (Other name: 3-FMC);

(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);

(68) α-Pyrrolidinobutiophenone (Other name: [α]-PBP);

(69) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other name: AB-CHMINACA);

(70) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other name: AB-PINACA);

(71) [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);

(72) 1 Methyl 4 phenyl 1,2,5,6 tetrahydro pyridine (MPTP); and

(73) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: MAB-CHMINACA; ABD-CHMINACA).

-Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

-Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) N-Benzylpiperazine (Other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(3) Cathinone (Other names: 2-amino-1-phenyl-1-propanone; α-aminopropiophenone; 2-aminopropiophenone; norephedrone);

(4) Fenethylline;

(5) Methcathinone (Other names: 2-(methylamino)-propiophenone; α-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; α-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; UR1432);

(6) 4-Methylaminorex;

(7) N-Ethylamphetamine; and

(8) N,N Dimethylamphetamine (Other names: N,N-α-trimethylbenzene-ethaneamine; N,N-α-trimethylphenethylamine).

-Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-Hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

(1-2) 3-(1-Naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

(1-3) 3-(1-Naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

(1-4) 1-(1-Naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent;

(1-5) 3-Phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent;

(2) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other name: CP-47,497);

(3) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol; CP-47,497 C8 homolog);

(4) 1-Pentyl-3-(1-naphthoyl)indole (Other names: JWH-018; AM678);

(5) 1-Butyl-3-(1-naphthoyl)indole (Other name: JWH-073);

(6) 1-Hexyl-3-(1-naphthoyl)indole (Other name: JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other name: JWH-200);

(8) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (Other name: JWH-250);

(9) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other name: JWH-081);

(10) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole (Other name: JWH-122);

(11) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other name: JWH-398);

(12) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (Other name: AM2201);

(13) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (Other name: AM694);

(14) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19; RCS-4);

(15) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18; RCS-8); and

(16) 1-Pentyl-3-(2-chlorophenylacetyl)indole (Other name: JWH-203).

-Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

*(1) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);

*(2) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-caboxamido)-3-methylbutanoate (Other name: 5F-AMB);

*(3) N-(Adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);

*(4) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (Other name: ADB-FUBINACA);

*(5) Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);

*(6) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA);

*(7) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);

(8) N-(1-Phenethylpiperidin-4-yl)-N-phenylpentanamide (Other name: valeryl fentanyl);

(9) N-(4-Methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (Other name: p-methoxybutyryl fentanyl);

(10) N-(4-Chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: p-chloroisobutyryl fentanyl);

(11) N-(1-Phenethylpiperidin-4-yl)-N-phenylisobutyramide (Other name: isobutyryl fentanyl);

(12) N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);

(13) Fentanyl-related substances.

(13-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(13-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(13-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(13-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(13-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(13-1-5) Replacement of the N-propionyl group by another acyl group;

*(13-2) This definition includes, but is not limited to, the following substances:

*(13-2-1) N-(1-(2-Fluorophenethyl)piperidin-4- yl)-N-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-o-fluorofentanyl);

*(13-2-2) N-(2-Methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (Other name:o-methyl acetylfentanyl);

*(13-2-3) N-(1-Phenethylpiperidin-4-yl)-N,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl);

*(13-2-4) N-(1-Phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl);

*(13-2-5) (E)-N-(1-Phenethylpiperidin-4-yl)-N-phenylbut- 2-enamide (Other name: crotonyl fentanyl);

(14) Naphthalen-1-yl-1-(5-fluoropentyl)-1H-indole-3-carboxylate (Other names: NM2201; CBL2201);

(15) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

(16) 1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

(17) Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

(18) 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(19) N-ethylpentylone (Other names: ephylone; 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

*(20) Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

*(21) Methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

*(22) N-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL));

*(23) 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

*(24) (1-(4-Fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

*(25) N-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

*(26) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

*(27) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

*(28) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP; 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

*(29) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

*(30) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

SCHEDULE II

Schedule II consists of:

-Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemedine, naloxegol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

*(1-10) Noroxymorphone;

(1-11) Opium extracts;

(1-12) Opium fluid extracts;

(1-13) Oripavine;

(1-14) Oxycodone;

(1-15) Oxymorphone;

(1-16) Powdered opium;

(1-17) Raw opium;

(1-18) Thebaine; and

(1-19) Tincture of opium;

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) Coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) Decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or

(4-2-2) Ioflupane.

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

-Schedule II Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (Other names: levo-α-acetylmethadol; levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone Intermediate (Other name: 4-cyano-2-dimethylamino-4,4-diphenyl butane);

(17) Moramide Intermediate (Other name: 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid);

(18) Pethidine (meperidine);

(19) Pethidine Intermediate-A (Other name: 4-cyano-1-methyl-4-phenylpiperidine);

(20) Pethidine Intermediate-B (Other name: ethyl-4-phenylpiperidine-4-carboxylate);

(21) Pethidine Intermediate-C (Other name: 1-methyl-4-phenylpiperidine-4-carboxylic acid);

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil;

(28) Tapentadol; and

*(29) Thiafentanil (Other name: methyl 4-(2-methoxy-N-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

-Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts;

(4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

-Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

-Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one); and

(2) Dronabinol in oral solution in drug products approved for marketing by the U.S. Food and Drug Administration.

-Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine;

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC); and

(4) Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethylpiperidine (ANPP).

SCHEDULE III

Schedule III consists of:

-Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) A compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) A suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the U.S. Food and Drug Administration for marketing only as a suppository;

(3) A substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol; and

*(5)Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food Drug and Cosmetic Act.

-Schedule III

(1) Nalorphine.

-Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) A material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoqui¬noline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-4) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milli¬grams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredi¬ents in recognized therapeutic amounts; and

(1-6) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

-Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

-Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) Androstanediol--

(1-1) 3β,17β-dihydroxy-5α-androstane;

(1-2) 3α,17β-dihydroxy-5α-androstane;

(2) Androstanedione (5α-androstan-3,17-dione);

(3) Androstenediol--

(3-1) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

(3-2) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

(3-3) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(4) Androstenedione--

(4-1) 1-androstenedione (5α-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) Bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(6) Boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

(7) Boldione (androsta-1,4-diene-3,17-dione);

(8) Calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(9) Clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

(10) Dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one);

(11) Δ-1-Dihydrotestosterone (a.k.a. '1-testosterone') (17β-hydroxy-5α-androst-1-en-3-one);

(12) Desoxymethyltestosterone (17α-methyl-5α-androst-2-en-17β-ol; madol);

(13) 4-Dihydrotestosterone (17β-hydroxy-androstan-3-one);

(14) Drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

(15) Ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

(16) Fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

(17) Formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

(18) Furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(19) 13β-Ethyl-17β-hydroxygon-4-en-3-one;

(20) 4-Hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

(21) 4-Hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

(22) Mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

(23) Mesterolone (1α-methyl-17β-hydroxy-5α-androstan-3-one);

(24) Methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

(25) Methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

(26) Methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

(27) 17α-Methyl-3β, 17β-dihydroxy-5α-androstane;

(28) Methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one);

(29) 17α-Methyl-3α,17β-dihydroxy-5α-androstane;

(30) 17α-Methyl-3β,17β-dihydroxyandrost-4-ene;

(31) 17α-Methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);

(32) Methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);

(33) 17α-Methyl-17β-hydroxyestra-4,9-11-trien-3-one;

(34) Methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);

(35) Mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);

(36) 17α-Methyl-delta-1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (Other name: 17α-methyl-1-testosterone);

(37) Nandrolone (17β-hydroxyestr-4-en-3-one);

(38) Norandrostenediol--

(38-1) 19-Nor-4-androstenediol (3β,17β-dihydroxyestr-4-ene);

(38-2) 19-Nor-4-androstenediol (3α,17β-dihydroxyestr-4-ene);

(38-3) 19-Nor-5-androstenediol (3β,17β-dihydroxyestr-5-ene);

(38-4) 19-Nor-5-androstenediol (3α,17β-dihydroxyestr-5-ene);

(39) Norandrostenedione--

(39-1) 19-Nor-4-androstenedione (estr-4-en-3,17-dione);

(39-2) 19-Nor-5-androstenedione (estr-5-en-3,17-dione);

(40) 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(41) Norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);

(42) Norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);

(43) Norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);

(44) Normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);

(45) Oxandrolone (17α-methyl-17β-hydroxy-2-oxa-5α-androstan-3-one);

(46) Oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);

(47) Oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-5α-androstan-3-one);

(48) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole);

(49) Stanozolol (17α-methyl-17β-hydroxy-5α-androst-2-eno[3,2-c]-pyrazole);

(50) Stenbolone (17β-hydroxy-2-methyl-5α-androst-1-en-3-one);

(51) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(52) Testosterone (17β-hydroxyandrost-4-en-3-one);

(53) Tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one);

(54) Trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and

(55) any salt, ester, or ether of a drug or substance.

-Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol; (-)-Δ-9-(trans)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alfaxalone (5α-pregnan-3α-ol-11,20-dione);

(2) Alprazolam;

(3) Barbital;

*(4) Brexanolone (3α-hydroxy-5α-pregnan-20-one) (Other name: allopregnanolone);

(5) Bromazepam;

(6) Camazepam;

(7) Chloral betaine;

(8) Chloral hydrate;

(9) Chlordiazepoxide;

(10) Clobazam;

(11) Clonazepam;

(12) Clorazepate;

(13) Clotiazepam;

(14) Cloxazolam;

(15) Delorazepam;

(16) Diazepam;

(17) Dichloralphenazone;

(18) Estazolam;

(19) Ethchlorvynol;

(20) Ethinamate;

(21) Ethyl loflazepate;

(22) Fludiazepam;

(23) Flunitrazepam;

(24) Flurazepam;

(25) Fospropofol;

(26) Halazepam;

(27) Haloxazolam;

(28) Ketazolam;

(29) Loprazolam;

(30) Lorazepam;

(31) Lormetazepam;

(32) Mebutamate;

(33) Medazepam;

(34) Meprobamate;

(35) Methohexital;

(36) Methylphenobarbital (mephobarbital);

(37) Midazolam;

(38) Nimetazepam;

(39) Nitrazepam;

(40) Nordiazepam;

(41) Oxazepam;

(42) Oxazolam;

(43) Paraldehyde;

(44) Petrichloral;

(45) Phenobarbital;

(46) Pinazepam;

(47) Prazepam;

(48) Quazepam;

(49) Suvorexant;

(50) Temazepam;

(51) Tetrazepam;

(52) Triazolam;

(53) Zaleplon;

(54) Zolpidem; and

(55) Zopiclone, its salts, isomers, and salts of isomers.

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those

isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenfluramine;

(5) Fenproporex;

(6) Mazindol;

(7) Mefenorex;

(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);

(10) Phentermine;

(11) Pipradrol;

*(12) Solriamfetol ((R)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β-amino-carbamate (ester));

(13) Sibutramine; and

(14) SPA [1-dimethylamino-1,2-diphenylethane].

-Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane); and

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (Other name: tramadol).

-Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, or substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Carisoprodol;

(3) Eluxadoline (Other name: 5-[[[(2S-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;

(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and

(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

-Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

-Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names: BRV; UCB-34714; and Briviact);

(2) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-proprionamide];

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]; and

*(5) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

TRD-202001123
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: March 13, 2020

♦ ♦ ♦

Panhandle Regional Planning Commission

Notice of Public Hearing

The Panhandle Water Planning Group (PWPG), a Regional Water Planning Group formed pursuant to the requirements of Senate Bill 1 (75th Legislative Session), will hold a Public Hearing on April 23rd, 2020 at the Texas AgriLife Research and Extension Center at Amarillo, 6500 Amarillo Boulevard West, Amarillo, Texas beginning at 6:00 p.m., CST. The purpose of the Public Hearing is to present to the public the results of the Initially Prepared 2021 Regional Water Plan (IPP) for Region A, Panhandle Water Planning Area, and to solicit input and comments from the general public and interested parties

and entities. Region A comprises all of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Randall, Armstrong, Donley, Collingsworth, Hall, and Childress Counties.

The Public Hearing will consist of a presentation on the IPP, receipt of written and oral comments from the public, and comments from the PWPG.

The IPP is currently available for public review and inspection at www.panhandlewater.org and in the County Clerk's office in each of the Region A Counties listed above. The IPP is also available in the following public libraries or alternate locations: Dallam County (Dalhart); Sherman County (Stratford); Hansford County (Spearman); Perry Memorial (Perryton); Kilgore Memorial (Dumas); Hutchinson County (Borger); Roberts County (Miami); Hemphill County (Canadian); Oldham County (Vega); Potter County (Amarillo Downtown Library); Carson County (Panhandle); Lovett Memorial (Pampa); Wheeler; Canyon; Claude; Clarendon; Wellington; Memphis; Childress; and the offices of the Panhandle Regional Planning Commission, 415 W. 8th Amarillo, TX.

For more information please contact: Dustin Meyer, Local Government Services Director, P.O. Box 9257, Amarillo, TX 79105; ph: (806) 372-3381; dmeyer@theprpc.org. The PWPG will receive written and oral comments at the hearing and will also receive written comments separate from the hearing. Individuals wishing to submit written comments separate from the hearing may address their comments to the PWPG, Attn: Dustin Meyer at the above address. All written comments submitted separate from the hearing must be received no later than 5:00 p.m., May 24, 2020. All comments received will be considered prior to final adoption of the 2021 Panhandle Regional Water Plan.

TRD-202001172
Dustin Meyer
Local Government Services Director
Panhandle Regional Planning Commission
Filed: March 18, 2020

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 12, 2020, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of South Plains Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50658.

South Plains requests a high-cost support adjustment increase of $1,747,519. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending March 1, 2020, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50658.

TRD-202001153
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: March 17, 2020

♦ ♦ ♦

Department of Savings and Mortgage Lending

Correction of Error

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopted amendments to 7 TAC §81.201 in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6527).

The figure for Form B in 7 TAC §201(b) was submitted by the department with incorrect text. The correct version of Form B follows.

Figure: 7 TAC §81.201(b)

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? _____Yes _____No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: _____Yes ___No ____Not applicable

Verified prospective applicant's / applicant's income : _____Yes _____No ____Not applicable

Verified prospective applicant's / applicant's available cash to close: _____Yes _____No ____Not applicable

Reviewed prospective applicant's / applicant's debts and other assets: _____Yes _____No ____Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than $_____

2. The lender does not object to encumbrances to title shown in the title commitment

3. The subject property's survey shows no encroachments

4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes the loan documents the lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

_____

Residential Mortgage Loan Originator Name

NMLS ID #

TRD-202001159

♦ ♦ ♦

Texas Water Development Board

Request for Information HB 1052

580-20-RFI-0009 for STATE PARTICIPATION ACCOUNT INTERREGIONAL WATER SUPPLY PROJECTS

NIGP CODEs: 926/00, 968/00, 989/00

SOLICITATION DATE: APRIL 1, 2020

RESPONSES DUE: JULY 1, 2020, no later than 2:00 p.m. CDT

Texas Water Development Board; P.O. Box 13231; Austin, TX 78711-3231; Contact: Angela Wallace; Phone: (512) 463-5077; Email: angela.wallace@twdb.texas.gov

BACKGROUND INFORMATION/HISTORY

The Texas Water Development Board (TWDB) was created by the Texas Legislature and by constitutional amendment in 1957. The agency's mission is to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas.

The State Participation program is one of several financial assistance programs offered by the TWDB. The goal of the program is to allow for the "right sizing" of projects in consideration of future needs. Historically, the program has encouraged the optimum development of regional projects by funding excess capacity for future use. Through Fiscal Year 2018, the program has committed approximately $368 million for projects across Texas.

The 86th Texas Legislature authorized the TWDB to provide funding from the State Participation Account to encourage optimum development of interregional water supply projects selected under Texas Water Code Section 16.145. In addition, the Legislature directed the TWDB to identify potential water supply projects that benefit multiple water planning regions.

REQUEST FOR INFORMATION

The TWDB is issuing this request for information (RFI) to seek information and comments regarding water supply projects that would benefit multiple water planning regions. A map of the regional water planning areas is shown in Appendix A. The TWDB is collecting this information as directed in HB 1052 that passed during the 86th Legislative Session. The purpose of this RFI is to provide a means for stakeholders to share ideas regarding the types of interregional projects that could be considered for funding at a later date.

The intent is to use funds, if and when available subject to future appropriations, from the State Participation Account to encourage optimum development of water supply projects selected under Texas Water Code Section 16.145 that benefit multiple water planning regions.

PLEASE NOTE: This is only an RFI. The TWDB is NOT seeking applications for funding at this time.

The TWDB will develop criteria to prioritize projects based on the following factors:

- maximizing the use of private financial resources,

- combining the financial resources of multiple water planning regions, and

- having a substantial economic benefit to the regions served by:

(1) affecting a large population,

(2) creating jobs in the regions served, and

(3) meeting a high percentage of the water supply needs of the water users served by the project.

This RFI is only a request for information and no contractual obligation on behalf of the TWDB whatsoever shall arise from this RFI process. It does NOT constitute a request for proposal (RFP), request for offer (RFO), invitation for bid (IFB), or any other solicitation, nor does it constitute the commitment to issue any solicitation in the future. Those choosing to respond to this RFI will, merely by virtue of submitting such a response, NOT be deemed to be "bidders" or applicants in any sense, and no such respondent will have any preference, special designation, advantage or disadvantage whatsoever in any subsequent procurement process related to this RFI.

This RFI does NOT commit the TWDB to pay costs incurred in the preparation or submission of any response to the RFI. It is the respon-

sibility of the potential respondent to monitor the Electronic State Business Daily (ESBD) for additional information pertaining to this RFI.

Pursuant to §552.234(c) of the Public Information Act (PIA), the following email address has been designated for public information requests: publicinfo@twdb.texas.gov.***Note: A request emailed to any other TWDB department email address does not trigger the requirements of the PIA.***

Respondents are advised that materials contained in their response are subject to the PIA. If respondent asserts that any material in the response is confidential or proprietary information, respondent must clearly mark the applicable pages of respondent's submission in boldface type to indicate each claim of confidentiality and include the words "confidential" at the top of the page. Additionally, respondent must include a statement on company letterhead identifying all response section(s) and specific pages(s) that have been marked as confidential and explain why the information is marked as confidential and excepted from public disclosure under the provisions of the PIA. Merely making a blanket claim that the entire response is protected from disclosure because it contains some proprietary information is not acceptable and will make the entire response subject to release under the Act.

RESPONSES TO THIS RFI

Respondents are encouraged to provide specific recommendations for water supply projects that benefit multiple planning regions. Each recommendation must include detailed explanations of the following:

- how the use of private financial resources would be maximized;

- how the financial resources of multiple water planning regions would be combined; and

- how the project would substantially economically benefit the regions served by:

(1) affecting a large population,

(2) creating jobs in the regions served, and

(3) meeting a percentage of the water supply needs of the water users served by the project.

All responses must also include:

- the RFI number and submittal deadline;

- company/entity name, address, and phone number;

- name and title of the authorized representative submitting the response; and

- name, phone number, and email address of the contact person for any questions on the response.

The TWDB will not accept any submission or portion of a submission containing a copyright. All responses become the property of the TWDB after submission.

TWDB Contact and Response Submission

For questions regarding this request for information, please contact Angela Wallace via email at angela.wallace@twdb.texas.gov no later than 5:00 p.m. (CDT) on June 8, 2020. All answers will be posted on the ESBD as an addendum to this RFI no later than 5:00 p.m. (CDT) on June 15, 2020.

Responses must be submitted via the attached form shown in Appendix B and delivered to TWDB by one of the following methods:

U.S. Postal Service

Texas Water Development Board

Water Supply and Infrastructure

P.O. Box 13231

Austin, TX 78711-3231

Overnight/Express Mail or Hand Delivery

Texas Water Development Board

1700 N. Congress Avenue, 6th Floor Reception Desk

Austin, TX 78701

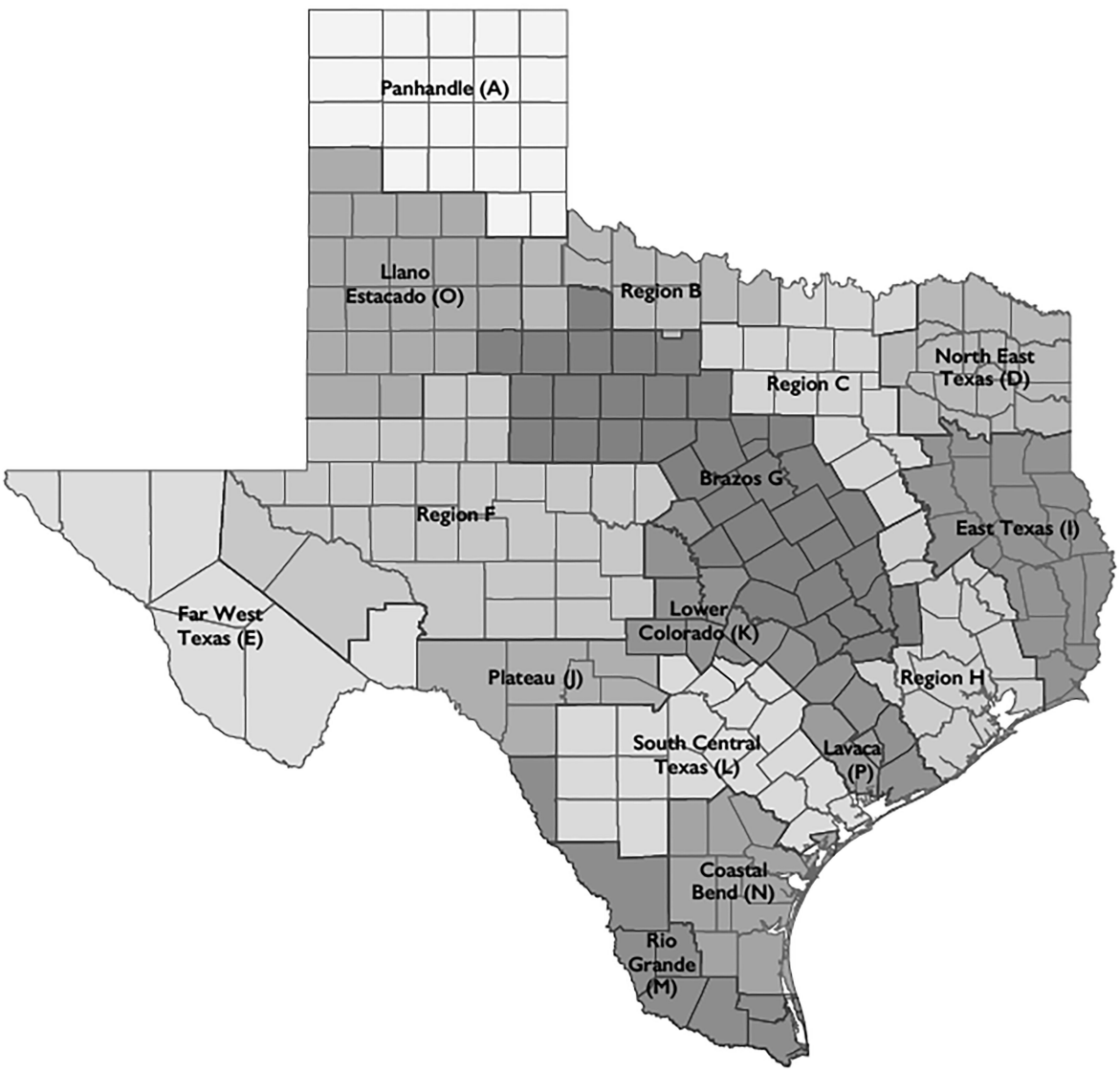
Hours - 8:00 a.m. to 5:00 p.m. (CDT)

Telephone, facsimile, or emailed submissions will not be considered.

For convenience, a link to a Microsoft Word version of the response form in Appendix B is located in the "Hot Topics" section of the TWDB webpage (https://www.twdb.texas.gov/index.asp).

RESPONSES ARE DUE NO LATER THAN 2:00 p.m. (CDT ON JULY 1, 2020

APPENDIX A
Regional Water Planning Areas



APPENDIX B
Response Form

TWDB REQUEST FOR INFORMATION 580-20-RFI-0009
DUE NO LATER THAN 2:00 PM (CDT) on JULY 1, 2020

Company/Entity Name	
Address	**Phone Number**
Name and Title of Authorized Representative Submitting the Response	
Contact Person Name	**Contact Person Phone Number**
Contact Person Email Address	
Regions Affected (as shown on Regional Water Planning Areas map)	
Proposed Source for the Water Supply	
Response	

Company/Entity Name
Response (continued)

TRD-202001163
Joe Reynolds
Interim General Counsel
Texas Water Development Board
Filed: March 18, 2020

♦ ♦ ♦

Regional Water Planning Group - Area B

Notice of Public Hearing on the 2021 Region B Initially Prepared Plan

Notice is hereby given that the Regional Water Planning Group - Area B (RWPG-B) will hold a public hearing to receive verbal and written comments on the adopted *2021 Region B Initially Prepared Plan (IPP).* The Region B area includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the part of Young County that encompasses the City of Olney. Comments submitted to the RWPG-B will be utilized in the development of the final *2021 Region B Regional Water Plan.*

The Public Hearing will be held:

Wednesday, April 22, 2020, at 6:00 p.m. at the

Red River Authority of Texas Administrative Offices

3000 Hammon Road

Wichita Falls, Texas 76310

The RWPG-B will accept written comments through 5:00 p.m. on June 22, 2020, and will accept verbal and written comments on the *IPP* during the Public Hearing. Written comments, questions or requests for additional information should be directed to:

Mr. Russell Schreiber, P. E., RWPG-B Chair

c/o Red River Authority of Texas

P.O. Box 240

Wichita Falls, TX 76307

(940) 723-2236

rwpg-b@rra.texas.gov

A copy of the *IPP* is available for viewing at the RWPG-B Administrative Agency, Red River Authority of Texas, 3000 Hammon Road, Wichita Falls, and on the RWPG-B website at www.regionbwater.org . A printed or electronic copy of the *IPP* will be available for viewing at the County Clerk's Office in each county located within the Region B water planning area. A printed or electronic copy of the *IPP* will also be available for viewing at the following libraries: Archer Public Library, Baylor County Free Library, Edwards Public Library, Bicentennial City-County Library, Foard County Library, Thompson Sawyer Library, King County Library, Bowie Public Library, Nocona Library, Wichita Falls Public Library, Carnegie City-County Library, and the Olney Community Library.

TRD-202001155
Russell Schreiber, P.E.
Region B Chair
Regional Water Planning Group - Area B
Filed: March 17, 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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