
TEXAS REGISTER

Volume 45 Number 29

July 17, 2020

Pages 4843 - 5060



TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

<https://www.sos.texas.gov>
register@sos.texas.gov

Texas Register, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

Secretary of State - Ruth R. Hughs

Director - Robert Summers

Editor-in-Chief - Jill S. Ledbetter

Editors

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

IN THIS ISSUE

GOVERNOR

Appointments.....	4849
Executive Order GA-29.....	4849
Proclamation 41-3746.....	4850

ATTORNEY GENERAL

Requests for Opinions.....	4851
----------------------------	------

EMERGENCY RULES

TEXAS BOARD OF NURSING

LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24.....	4853
---------------------	------

COUNCIL ON SEX OFFENDER TREATMENT

COUNCIL ON SEX OFFENDER TREATMENT

22 TAC §810.3.....	4854
--------------------	------

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §§354.1729, 354.1735, 354.1737, 354.1753, 354.1757.....	4857
---------------------------------------------------------------	------

TEXAS DEPARTMENT OF AGRICULTURE

FUEL QUALITY

4 TAC §§5.1, 5.3 - 5.7.....	4869
-----------------------------	------

WEIGHTS AND MEASURES

4 TAC §12.1.....	4871
4 TAC §§12.11 - 12.13, 12.15.....	4872
4 TAC §12.40.....	4873

TEXAS HISTORICAL COMMISSION

HISTORY PROGRAMS

13 TAC §21.6.....	4874
-------------------	------

CEMETERIES

13 TAC §22.4.....	4875
-------------------	------

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

PROFESSIONAL COUNSELORS

22 TAC §§681.2, 681.4, 681.5, 681.9, 681.11.....	4876
22 TAC §§681.10, 681.12 - 681.17.....	4879
22 TAC §681.31.....	4880
22 TAC §§681.31, 681.41 - 681.47, 681.49 - 681.53.....	4881
22 TAC §§681.41 - 681.51.....	4891
22 TAC §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, 681.147, 681.164.....	4892

22 TAC §§681.71 - 681.73.....	4898
22 TAC §§681.201, 681.203 - 681.205.....	4900
22 TAC §§681.81 - 681.83.....	4902
22 TAC §681.91, §681.93.....	4903
22 TAC §§681.101 - 681.103.....	4904
22 TAC §§681.111 - 681.114.....	4905
22 TAC §§681.121, 681.123 - 681.126.....	4907
22 TAC §§681.141 - 681.143, 681.145 - 681.147.....	4908
22 TAC §§681.161, 681.162, 681.164 - 681.172.....	4909
22 TAC §§681.181, 681.182, 681.184.....	4911
22 TAC §§681.201 - 681.204.....	4912
22 TAC §§681.251 - 681.253.....	4913

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

SOCIAL WORKER LICENSURE

22 TAC §§781.101, 781.102, 781.202, 781.203, 781.205 - 781.209.....	4915
22 TAC §§781.201 - 781.223.....	4919
22 TAC §§781.301 - 781.313, 781.316 - 781.323.....	4921
22 TAC §§781.301 - 781.317.....	4930
22 TAC §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418 - 781.420, 781.508 - 781.510, 781.514.....	4931
22 TAC §§781.401 - 781.419.....	4939
22 TAC §§781.801, 781.803 - 781.805.....	4941
22 TAC §§781.501 - 781.517.....	4943
22 TAC §§781.601 - 781.610.....	4944
22 TAC §§781.701 - 781.704.....	4946
22 TAC §§781.801 - 781.808.....	4947

TEXAS PARKS AND WILDLIFE DEPARTMENT

LAW ENFORCEMENT

31 TAC §55.1.....	4948
-------------------	------

RESOURCE PROTECTION

31 TAC §69.20.....	4950
31 TAC §69.30.....	4951
31 TAC §§69.43 - 69.52.....	4951

COMPTROLLER OF PUBLIC ACCOUNTS

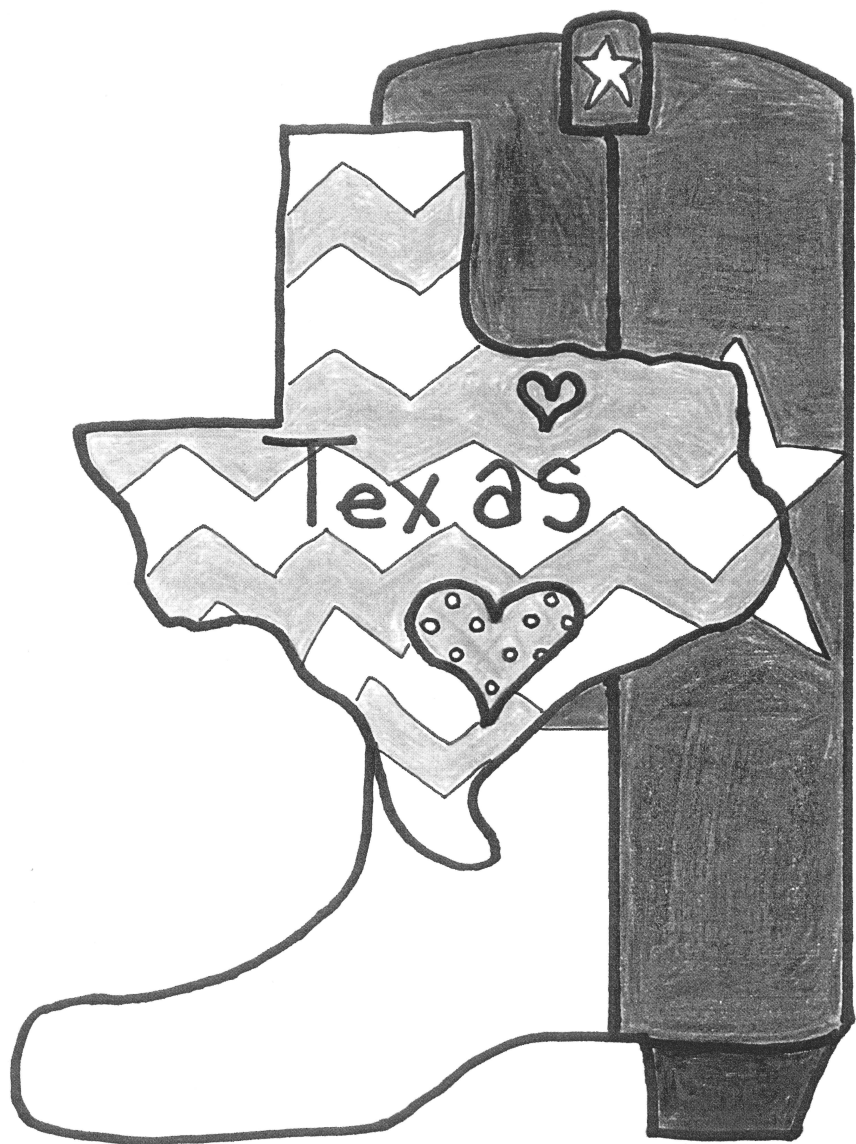
TAX ADMINISTRATION

34 TAC §3.34.....	4958
34 TAC §3.34.....	4958
34 TAC §3.1202.....	4960

WITHDRAWN RULES

TEXAS REAL ESTATE COMMISSION	
CANONS OF PROFESSIONAL ETHICS AND CONDUCT	
22 TAC §§531.18.....	4963
ADOPTED RULES	
TEXAS HEALTH AND HUMAN SERVICES COMMISSION	
CHILDREN'S ADVOCACY PROGRAMS	
1 TAC §§377.201, 377.203, 377.205, 377.207, 377.209, 377.211	4965
TEXAS HISTORICAL COMMISSION	
HISTORIC SITES	
13 TAC §16.13.....	4965
TEXAS MAIN STREET PROGRAM	
13 TAC §19.3.....	4966
RESTRICTED CULTURAL RESOURCE INFORMATION	
13 TAC §24.17.....	4966
PRACTICE AND PROCEDURE	
13 TAC §§26.13, 26.15, 26.17.....	4967
MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS	
13 TAC §29.5.....	4967
STATE PRESERVATION BOARD	
RULES AND REGULATIONS OF THE BOARD	
13 TAC §111.13.....	4968
TEXAS EDUCATION AGENCY	
SCHOOL DISTRICTS	
19 TAC §61.1027.....	4971
PLANNING AND ACCOUNTABILITY	
19 TAC §97.1001.....	4972
COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL	
19 TAC §150.1012, §150.1013.....	4977
TEXAS OPTOMETRY BOARD	
CONTINUING EDUCATION	
22 TAC §275.2.....	4985
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	
LANDSCAPE IRRIGATION	
30 TAC §344.1.....	4998
30 TAC §§344.20 - 344.22, 344.24.....	5000
30 TAC §§344.30, 344.31, 344.33 - 344.38.....	5001
30 TAC §344.32.....	5003
30 TAC §§344.30, 344.42, 344.43.....	5003
30 TAC §§344.50 - 344.52.....	5003
30 TAC §§344.60 - 344.66.....	5004
30 TAC §§344.70 - 344.72.....	5006
30 TAC §344.80.....	5006
TEXAS PARKS AND WILDLIFE DEPARTMENT	
EXECUTIVE	
31 TAC §51.613, §51.614.....	5007
WILDLIFE	
31 TAC §65.3, §65.24.....	5008
31 TAC §65.81, §65.82.....	5009
31 TAC §§65.314 - 65.320.....	5011
COMPTROLLER OF PUBLIC ACCOUNTS	
STATE ENERGY CONSERVATION OFFICE	
34 TAC §19.32.....	5013
RULE REVIEW	
Proposed Rule Reviews	
Office of the Attorney General.....	5015
Texas Parks and Wildlife Department.....	5015
Texas Workforce Commission.....	5016
TABLES AND GRAPHICS	
.....	5019
IN ADDITION	
Capital Area Rural Transportation System	
RFP - General Contractors for Elgin Station.....	5035
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	5035
Texas Commission on Environmental Quality	
Agreed Orders.....	5035
Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015825001.....	5038
Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40311.....	5039
Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40312.....	5040

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40313	5041	Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	5047
Notice of Declaration of Technical Completeness: Radioactive Material License Number R05807	5042	State Independent Living Council	
Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions	5043	Request for Proposals	5048
Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action	5043	Public Utility Commission of Texas	
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	5044	Notice of Proceeding for 2020 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund	5049
NOTICE OF PUBLIC MEETING: Proposed Air Quality Permit No. 159582	5045	Notice of Proceeding for 2020 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds	5050
Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit: Proposed Permit No. 2400	5046	Texas Department of Transportation	
General Land Office		Public Notice - Advertising in Texas Department of Transportation's Travel Literature and Texas Highways Magazine	5050
Correction of Error	5047	Workforce Solutions Deep East Texas	
		Request for Quotes 20-400	5058



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 July 6, 2020

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2021, Stanley M. Duchman, M.D. of Houston, Texas (replacing Melbert C. "Bob" Hillert, Jr., MD. of Dallas, who is deceased).

Appointments for July 8, 2020

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Sue T. Allen of Waco, Texas (Ms. Allen is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Michael A. White, D.V.M. of Conroe, Texas (Dr. White is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Victoria R. Whitehead of Lubbock, Texas (replacing George Antuna, Jr. of Schertz, whose term expired).

TRD-202002812



Executive Order GA-29

Relating to the use of face coverings during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texans safe is for all people to consistently follow good hygiene and social-distancing practices; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, further measures are needed to achieve the least restrictive means for reducing the growing spread of COVID-19, and to avoid a need for more extreme measures; and

WHEREAS, I have joined the medical experts in consistently encouraging people to use face coverings, and health authorities have repeatedly emphasized that wearing face coverings is one of the most important and effective tools for reducing the spread of COVID-19; and

WHEREAS, given the current status of COVID-19 in Texas, requiring the use of face coverings is a targeted response that can combat the threat to public health using the least restrictive means, and if people follow this requirement, more extreme measures may be avoided; and

WHEREAS, wearing a face covering is important not only to protect oneself, but also to avoid unknowingly harming fellow Texans, especially given that many people who go into public may have COVID-19 without knowing it because they have no symptoms; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by fine;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at 12:01 p.m. on July 3, 2020:

Every person in Texas shall wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household; provided, however, that this face-covering requirement does not apply to the following:

1. any person younger than 10 years of age;
2. any person with a medical condition or disability that prevents wearing a face covering;
3. any person while the person is consuming food or drink, or is seated at a restaurant to eat or drink;
4. any person while the person is (a) exercising outdoors or engaging in physical activity outdoors, and (b) maintaining a safe distance from other people not in the same household;
5. any person while the person is driving alone or with passengers who are part of the same household as the driver;
6. any person obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a personal-care service involving the face, but only to the extent necessary for the temporary removal;
7. any person while the person is in a swimming pool, lake, or similar body of water;

8. any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged;

9. any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;

10. any person while the person is giving a speech for a broadcast or to an audience; or

11. any person in a county (a) that meets the requisite criteria promulgated by the Texas Division of Emergency Management (TDEM) regarding minimal cases of COVID-19, and (b) whose county judge has affirmatively opted-out of this face-covering requirement by filing with TDEM the required face-covering attestation form--provided, however, that wearing a face covering is highly recommended, and every county is strongly encouraged to follow these face-covering standards.

Not excepted from this face-covering requirement is any person attending a protest or demonstration involving more than 10 people and who is not practicing safe social distancing of six feet from other people not in the same household.

TDEM shall maintain on its website a list of counties that are not subject to this face-covering requirement pursuant to paragraph number 11. The list can be found at: www.tdem.texas.gov/ga29.

Following a verbal or written warning for a first-time violator of this face-covering requirement, a person's second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.

Local law enforcement and other local officials, as appropriate, can and should enforce this executive order, Executive Order GA-28, and other effective executive orders, as well as local restrictions that are consistent with this executive order and other effective executive orders. But no law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order or for related non-violent, non-felony offenses that are predicated on a violation of this executive order; provided, however, that any official with authority to enforce this executive order may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.

This executive order hereby prohibits confinement in jail as a penalty for the violation of any face-covering order by any jurisdiction.

Executive Order GA-28 is hereby amended to delete from paragraph number 15 the phrase: ", but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering."

The governor may by proclamation amend this executive order or add to the list of people to whom this face-covering requirement does not apply.

This executive order does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, GA-27, or GA-28 as amended. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 2nd day of July, 2020.

Greg Abbott, Governor

TRD-202002730



Proclamation 41-3746

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I issued Executive Order GA-28 on June 26, 2020, relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas; and

WHEREAS, additional measures are needed to slow the spread of COVID-19 in Texas;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby amend paragraph numbers 5 and 12 of Executive Order GA-28, effective at 12:01 p.m. on July 3, 2020, to read as follows:

5. For any outdoor gathering in excess of 10 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order;

12. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group;

This proclamation shall remain in effect and in full force for as long as Executive Order GA-28 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

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 July, 2020.

Greg Abbott, Governor

TRD-202002731



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-0360-KP

Requestor:

The Honorable Jim Murphy

Chair, House Committee on Pensions, Investments & Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Metropolitan Transit Authority of Harris County to prohibit service and access to its transit authority system to a person who refuses to comply with a rule requiring facial coverings (RQ-0360-KP)

Briefs requested by July 22, 2020

RQ-0361-KP

Requestor:

The Honorable John P. Cyrier

Chair, House Committee on Culture, Recreation & Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 2166.003 of the Government Code applies to the possible removal of the Lawrence Sullivan Ross statue at Texas

A&M University, and if so, who may provide approval for removal (RQ-0361-KP)

Briefs requested by July 21, 2020

RQ-0362-KP

Requestor:

The Honorable Brandon Creighton

Chair, Senate Committee on Higher Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of local governmental entities, operating under local emergency declarations, to delay, prohibit, or restrict eviction procedures established by the Legislature in chapter 24 of the Property Code (RQ-0362-KP)

Briefs requested by July 17, 2020

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

TRD-202002776

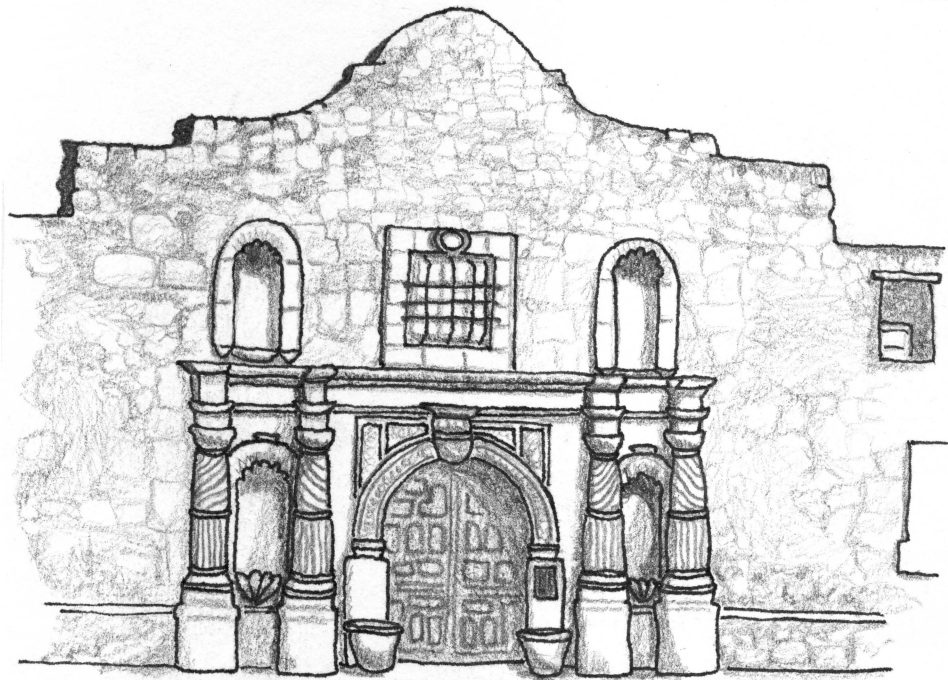
Lesley French

General Counsel

Office of the Attorney General

Filed: July 7, 2020





EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

Introduction. The Texas Board of Nursing (Board) adopts emergency amendments to §217.24, relating to *Telemedicine Medical Service Prescriptions*, pursuant to a finding of imminent peril to the public health, safety, and welfare, which requires adoption in fewer than thirty (30) days' notice, as authorized by Tex. Gov't. Code §2001.034.

Background

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e)(1), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held an emergency meeting on June 8, 2020, to consider the adoption of an emergency rule to permit APRNs to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt emergency amendments to §217.24(e)(1), which took effect June 8, 2020. The adopted emergency amendments were published in the *Texas Register* on June 19, 2020 (45 TexReg 4130). The emergency amendments will expire on July 7, 2020. However, the continuation of the effects of the COVID-19 pandemic necessitate the continuation of the emergency rule beyond the July 7, 2020 expiration date.

The re-adoption of emergency amendments to §217.24(e)(1) is immediately necessary to allow APRNs to continue to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the emergency amendments, an APRN may treat chronic pain with scheduled drugs through use of telemedicine medical services if a patient is an established chronic pain patient of the APRN, is seeking a telephone refill of an existing prescription, and the APRN determines that the telemedicine treatment is needed due to the COVID-19 pandemic. Further, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit. The APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for

the treatment of chronic pain with controlled substances. The emergency amendments will only apply to those APRNs whose delegating physicians agree to permit them to issue re-fills for these patients, and the services provided are limited to refills of controlled substances in Schedules III through V. Finally, these emergency amendments will only be in effect for a period of 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

Statutory Authority. The emergency amendments are adopted under the authority of the Tex. Occ. Code §301.151, which authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency amendments are also adopted pursuant to Tex. Gov't. Code §2001.034 and §2001.036(a)(2) on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

This emergency adoption also affects Texas Occupations Code Chapter 111.

§217.24. *Telemedicine Medical Service Prescriptions.*

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

(e) (No change.)

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(A) Notwithstanding paragraph (e)(1), treatment of chronic pain with scheduled drugs through use of telemedicine medical services is not prohibited by this rule if the patient is an established chronic pain patient of the APRN and is seeking telephone refill of an existing prescription, and the APRN determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by (e)(1)(A), the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by (e)(1)(A) above, shall give

due consideration to factors that include, at a minimum, date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(D) The emergency amendment of this rule, effective July 7, 2020, shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) (No change.)

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 July 6, 2020.

TRD-202002768

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: July 7, 2020

Expiration date: September 4, 2020

For further information, please call: (512) 305-6822



PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.3

The Council on Sex Offender Treatment (Council) adopts on an emergency basis an amendment to Title 22, Texas Administrative Code, §810.3, concerning License Required, to provide Licensed Sex Offender Treatment Provider (LSOTP) applicants with the flexibility to satisfy education requirements for licensure online.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In response to the COVID-19 outbreak and national, state, and local community efforts to contain the spread of the virus, including social distancing, the Council amends §810.3 to remove the prohibition of online education hours toward an applicant's satisfaction of education requirements for licensure.

As authorized by Government Code, §2001.034, the Council may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The Council finds that an imminent peril to the public health, safety, and welfare requires immediate adoption of this emergency rule. The amendment is necessary to provide LSOTP applicants with the flexibility to satisfy education requirements for licensure online.

SECTION-BY-SECTION SUMMARY

The amendment to §810.3 removes the sentence "Online hours are not acceptable" from subsection (c)(1)(B)(ii). There are no further changes to §810.3.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code, §2001.034, which authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice; under Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and under Occupations Code, §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The emergency rule implements Occupations Code, Chapter 110.

§810.3 License Required.

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

(c) Sex offender treatment does not include general rehabilitation or clinical services provided in a criminal justice or juvenile justice institution as a part of the mainstream adjunct treatment programs.

(1) Licensed Sex Offender Treatment Provider (LSOTP). To be eligible as a LSOTP, the applicant shall meet all of the following criteria:

(A) (No change.)

(B) experience and training required as listed in clauses (i) - (ii) of this subparagraph:

(i) possess a minimum of 1000 documented and verified hours of clinical experience while under the supervision of a council approved supervisor in the areas of assessment and treatment of sex offenders, obtained within the past 7-year period, and provide 1 reference letter from a licensed sex offender treatment provider who has actual knowledge of the applicant's clinical work in sex offender assessment and treatment; and

(ii) submit proof of completion of a minimum of 40 hours of documented continuing education training obtained within 3 years prior to the application date, in the specific area of sex offender assessment and treatment. [Online hours are not acceptable.] Of the initial 40 hours training required, 30 hours shall be in the specific area of sex offender assessment and treatment. Ten hours shall be in sexual assault victim related training;

(C) - (H) (No change.)

(2) - (11) (No change.)

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 July 2, 2020.

TRD-202002729

Aaron Pierce, PhD, LPC, LSOTP-S
Chairman
Council on Sex Offender Treatment
Effective date: July 2, 2020
Expiration date: October 29, 2020
For further information, please call: (512) 776-6972





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

DIVISION 8. DSRIP PROGRAM

DEMONSTRATION YEARS 9-10

1 TAC §§354.1729, 354.1735, 354.1737, 354.1753, 354.1757

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1729, concerning Definitions; §354.1735, concerning Participants; §354.1737, concerning RHP Plan Update for DY9-10; §354.1753, concerning Category C Requirements for Performers; and §354.1757, concerning Disbursement of Funds.

BACKGROUND AND PURPOSE

On December 21, 2017, the Centers for Medicare & Medicaid Services (CMS) approved Texas' request to extend the Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" for an additional five years. The Delivery System Reform Incentive Payment (DSRIP) program is included in this waiver and provides incentive payments to participating Medicaid providers, primarily for improving their performance on selected health outcome measures. Even though the Transformation Waiver was approved for five more years, CMS approved DSRIP funding only for an additional four years (demonstration years [DYs] 7-10).

Texas DSRIP for DYs 7-10 is governed by the Program Funding and Mechanics (PFM) Protocol, the Measure Bundle Protocol (MBP), and associated rules. HHSC negotiates the protocols with CMS and adopts rules reflecting the CMS-approved protocols.

HHSC posted the PFM Protocol proposal for DYs 9-10, along with a survey to solicit feedback on the proposal, to the Transformation Waiver website on January 3, 2019. HHSC considered the survey responses in finalizing the proposal that HHSC submitted to CMS on March 29, 2019. HHSC adopted rules, November 12, 2019, for DYs 9-10 that reflect this PFM Protocol proposal.

HHSC posted the MBP proposal for DYs 9-10, along with a survey to solicit feedback on the proposal, to the Transformation Waiver website on June 6, 2019. HHSC considered the survey responses in finalizing the proposal that HHSC submitted to CMS on July 31, 2019.

During the approval process, CMS required certain changes to the state's PFM protocol proposal and the MBP proposal. Once these changes were made, CMS approved both protocols on September 17, 2019. This amendment reflects the final versions of the PFM protocol and MBP approved by CMS.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1729 revises the definition of the term "encounter" to clarify that an email is not considered an encounter. It also revises the definition of the term "innovative measure." DY7-8 innovative measures were pay-for-reporting (P4R). If performers did not support converting a DY7-8 innovative measure to pay-for-performance (P4P) for DY9-10, the measure was discontinued for DY9-10. This left only one remaining innovative measure for DY9-10: F1-T03 (Preventative Care & Screening: Oral Cancer Screening), which will be P4P for DY10. In addition, the proposed amendment deletes the definition of the term "quality improvement collaborative activity," as there are no quality improvement collaborative activities for DY9-10.

The proposed amendment to §354.1735 clarifies that anchors are required to hold at least one public meeting prior to submitting the Regional Healthcare Partnership (RHP) plan update for DY9-10 to HHSC, as specified in the PFM Protocol.

The proposed amendment to §354.1737 adds references to provisions that are being added to another section relating to limitations on allowable changes to selected Category C Measure Bundles and measures. It also deletes the requirement that the RHP Plan Update for DY9-10 include for each performer the related strategies associated with each of the performer's Category C Measure Bundles for DY7-8 that the performer implemented in DY7-8.

The proposed amendment to §354.1753 clarifies that each Measure Bundle is assigned a point value for DY9-10 for Measure Bundle selection as described in the MBP. The point values for Measure Bundles D1, E1, E2, and F1 as specified in the Measure Bundle Protocol have changed from DY7-8 to DY9-10. The new point values for these Measure Bundles apply for Measure Bundle selection regardless of whether the performer: 1) selected one of these Measure Bundles for DY7-8 and is continuing that Measure Bundle into DY9-10; or 2) is newly-selecting one of these Measure Bundles for DY9-10.

The proposed amendment to §354.1753(a)(1) limits the number of points worth of a hospital's or physician practice's DY7-8

Measure Bundles and measures that it can delete for DY9-10 to 20 points, as required by CMS. Further, it adds the requirement that hospitals and physician practices must have good cause for deleting a Measure Bundle or measure and defines what constitutes good cause.

The proposed amendment of §354.1753(a)(1) also deletes subparagraph (I), which allows a hospital with a valuation less than or equal to \$2,500,000 per DY to select a Measure Bundle identified as a rural Measure Bundle in the MBP. Hospitals that selected a rural Measure Bundle for DY7-8 may continue it in DY9-10, but no hospitals may newly select a rural Measure Bundle for DY9-10.

The proposed amendment to §354.1753(a)(4) simplifies and clarifies the language describing the methodology for determining the valuation for measures in a selected Measure Bundle for which a hospital's or physician practice's denominator for a required measure or numerator for a population-based clinical outcome measure has no volume.

The proposed amendment to §354.1753(a)(5) replaces DY7-8 with DY9-10 for the measure milestones and corresponding valuations described in subsection (e) of this section.

The proposed amendment to §354.1753(a)(6) clarifies that a hospital's Medicaid and uninsured inpatient days and uninsured outpatient costs that are used to calculate the hospital's statewide hospital factor are those reported for federal fiscal year 2016 in the Texas Hospital Uncompensated Care Tool.

The proposed amendment to §354.1753(b)(1) limits the number of points worth of a community mental health center's (CMHC's) DY7-8 Measure Bundles and measures that it can delete for DY9-10 to 20 points, as required by CMS. Further, it adds the requirement that CMHCs must have good cause for deleting a Measure Bundle or measure and defines what constitutes good cause.

The proposed amendment to §354.1753(c)(1) clarifies that a local health department (LHD) may only select one of its DY6 Category 3 P4P measures for DY9-10 if the LHD selected that measure for DY7-8. It also deletes language prohibiting an LHD from selecting the same measure from both the LHD Measure Menu of the MBP and its DY6 Category 3 P4P measures, as LHDs may not newly select one of their DY6 Category 3 P4P measures for DY9-10.

The proposed amendment to §354.1753(c)(1) also limits the number of points worth of a LHD's DY7-8 Measure Bundles and measures that it can delete for DY9-10 to 20 points, as required by CMS. Further, it adds the requirement that LHDs must have good cause for deleting a Measure Bundle or measure and defines what constitutes good cause.

The proposed amendment to §354.1753(d) deletes Performance Year (PY) 5.

The proposed amendment to §354.1753(e) changes the innovative measure's DY10 milestones and corresponding valuations from one Reporting Year (RY) 4 reporting milestone worth 100 percent of the measure's valuation to one RY4 reporting milestone worth 25 percent of the measure's valuation and one achievement milestone worth 75 percent of the measure's valuation.

The proposed amendment to §354.1753(e) also changes the P4P measures' DY9-10 milestone valuations from those in the PFM protocol proposal HHSC submitted to CMS on January 3,

2019, back to those that were in effect in DY7-8 and included in the final PFM protocol language for DY9-10 approved by CMS on September 17, 2019. It changes the total valuations for the DY9-10 reporting milestones from 33 percent of the measure's valuation back to 25 percent and changes the valuations for the DY9-10 goal achievement milestones from 67 percent of the measure's valuation back to 75 percent.

The proposed amendment to §354.1753(e) also clarifies the methodology for determining the valuation for the goal achievement milestones for the measures in a selected Measure Bundle that includes a P4R population-based clinical outcome measure for which a hospital's or physician practice's numerator has insignificant volume.

The proposed amendment to §354.1753(f) clarifies that performers are only required to update previous reporting on related strategies associated with each Measure Bundle, measure, or group of measures to be eligible for payment of a measure's reporting milestones for each DY.

The proposed amendment to §354.1753(g) clarifies the goals for DY9-10 goal achievement milestones for QISMC P4P measures selected for DY7-10 that have a baseline below the Minimum Performance Level (MPL). It also specifies that the innovative measure selected for DY7-10 will be treated as an Improvement Over Self (IOS) measure in DY10 and will have a gap closure of 12.5 percent over baseline unless an alternate goal based on benchmark data is recommended by the measure developer as part of the measure validation process.

The proposed amendment to §354.1753(g) also clarifies the goals for DY9-10 goal achievement milestones for Quality Improvement System for Managed Care (QISMC) P4P measures newly-selected for DY9-10 that have a baseline below the MPL. It also specifies that the innovative measure newly-selected for DY9-10 will be treated as an IOS measure in DY10 and will have a gap closure of 10 percent over baseline unless an alternate goal based on benchmark data is recommended by the measure developer as part of the measure validation process.

The proposed amendment to §354.1753(g) also prohibits performers from using a numerator of zero for the baseline measurement period for measures newly-selected for DY9-10. It specifies that if a performer received HHSC approval to use a numerator of zero for the baseline measurement period for a DY7-8 P4P measure, and the performer continues that measure in DY9-10, the goals for the DY9 and DY10 goal achievement milestones are determined in accordance with §354.1753(g)(3) using an updated baseline that is set at the PY1 rate.

The proposed amendment to §354.1753(h) prohibits performers from carrying forward achievement of a measure's DY10 goal achievement milestone to PY5. CMS did not approve HHSC's proposal to allow performers to carry forward achievement of a measure's DY10 goal achievement milestone to PY5 because DSRIP expenditure authority ends in DY10.

The proposed amendment to §354.1757 makes the goal achievement milestone for a hospital safety measure with perfect performance at baseline eligible for full payment for maintenance of high performance if certain conditions are met.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state governments.

There could be fiscal implications to local governments as a result of enforcing and administering the amendments as proposed. The proposed rules prohibit performing providers from carrying forward achievement of a measure's DY 10 goal achievement milestone to PY 5. HHSC lacks sufficient data to provide an estimate of the possible local government fiscal impact.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities related to the proposed rules. The proposed rules prohibit performing providers from carrying forward achievement of a measure's DY 10 goal achievement milestone to PY 5. There are 300 DSRIP participating providers. HHSC lacks sufficient information on which DSRIP performing providers are considered a small business, micro-business, or rural community, and which of those providers would request to carry forward achievement. As a result, HHSC lacks sufficient information to provide an estimate of the potential economic impact.

HHSC did not consider any alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities because the proposed rules are necessary to comply with the terms of the Transformation Waiver.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved quality of care for individuals served by DSRIP performers.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no requirement for performing providers to alter their business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code W-201, P.O. Box 13247, Austin, Texas 78711-3247, or by email to TXHealthcareTransformation@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R067" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

The amendments affect Chapter 531 of the Texas Government Code and Chapter 32 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§354.1729. Definitions.

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

(1) Core activity--An activity implemented by a performer to improve patient health or quality of care. It may be implemented by a performer to achieve the performer's Category C measure goals or it may be connected to the mission of the performer's organization.

(2) Delivery System Reform Incentive Payment (DSRIP) pool--Funds available to DSRIP performers under the waiver for their efforts to enhance access to health care, the quality of care, and the health of patients and families they serve.

(3) Demonstration Year (DY) 6--Federal fiscal year 2017 (October 1, 2016 - September 30, 2017).

(4) Demonstration Year (DY) 7--Federal fiscal year 2018 (October 1, 2017 - September 30, 2018).

(5) Demonstration Year (DY) 8--Federal fiscal year 2019 (October 1, 2018 - September 30, 2019).

(6) Demonstration Year (DY) 9--Federal fiscal year 2020 (October 1, 2019 - September 30, 2020).

(7) Demonstration Year (DY) 10--Federal fiscal year 2021 (October 1, 2020 - September 30, 2021).

(8) Demonstration Year (DY) 11--Federal fiscal year 2022 (October 1, 2021 - September 30, 2022).

(9) Denominator--As it relates to a Category C measure's volume:

(A) the number of Medicaid and low-income or uninsured (MLIU) cases; or

(B) one of the following, which the performer receives approval from HHSC to use for the measure:

(i) the number of all-payer cases;

(ii) the number of Medicaid cases; or

(iii) the number of low-income or uninsured (LIU) cases.

(10) Encounter--An encounter, for the purposes of Patient Population by Provider, is any physical or virtual contact between a performer and a patient during which an assessment or clinical activity is performed, with exceptions including those in subparagraph (B) of this definition.

(A) An encounter must be documented by the performer.

(B) An email, [A] phone call, or text message is not considered an encounter.

(11) Federal poverty level (FPL)--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(12) Initial demonstration period--The first five demonstration years (DYs) of the waiver, or December 12, 2011 through September 30, 2016.

(13) Innovative measure--F1-T03 (Preventative Care & Screening: Oral Cancer Screening) [A new measure developed for use in Category C].

(14) Insignificant volume--For most Category C measures, the denominator is considered to have insignificant volume if its volume is greater than zero but less than 30.

(15) Low-income or Uninsured (LIU)--An individual who is not enrolled in Medicaid or the Children's Health Insurance Program who meets one of the following criteria:

(A) is at or below 200 percent of the FPL; or

(B) does not have health insurance.

(16) Measure--A mechanism to assign a quantity to an attribute by comparison to a criterion. As it relates to Category C, a measure is a standardized tool to measure or quantify healthcare processes, outcomes, patient perceptions, organizational structure, or systems that are associated with the ability to provide high-quality health care.

(17) Measure Bundle--A grouping of measures under Category C that share a unified theme, apply to a similar population, and are impacted by similar activities. Measure Bundles are selected by hospitals and physician practices. All Measure Bundles include required measures, and some Measure Bundles also include optional measures.

(18) Measure Bundle Protocol--A master list of potential Category C Measure Bundles and measures, as well as Category D Statewide Reporting Measure Bundles and measures.

(19) Medicaid and low-income or uninsured (MLIU)--An individual who:

(A) is enrolled in Medicaid;

(B) is enrolled in the Children's Health Insurance Program;

(C) is at or below 200 percent of the FPL; or

(D) does not have health insurance.

(20) Milestone--An objective of DSRIP performance on which DSRIP payments are based.

(21) Minimum point threshold (MPT)--The minimum number of points that a performer must meet in selecting its Category C Measure Bundles or measures, as described in §354.1753 of this division (relating to Category C Requirements for Performers).

(22) No volume--For Category C measures, the denominator is considered to have no volume if its volume is equal to zero. For a Category C population-based clinical outcome measure, the numerator is considered to have no volume if the volume is equal to zero.

~~[(23) Quality improvement collaborative activity--An activity related to participating in a learning collaborative to improve targeted health outcomes. As included in Category C, a quality improvement collaborative activity is pay-for-reporting (P4R) in DY7-8.]~~

(23) ~~[(24) Patient Population by Provider (PPP)--The number of individuals in a performer's system for which there was an encounter during the applicable DY.~~

(24) ~~[(25) Patient Population by Provider Goal (PPP Goal)--The target number of individuals in a performer's system for which there will be an encounter during the applicable DY.~~

(25) ~~[(26) Performer--A provider enrolled in Texas Medicaid that participates in DSRIP and receives DSRIP payments.~~

(26) ~~[(27) Population-based clinical outcome measure--A Category C clinical outcome measure that measures emergency department utilization or admissions for select conditions for all individuals in the Measure Bundle's target population. It may be required as pay-for-performance (P4P) or pay-for-reporting (P4R) based on the Measure Bundle and the hospital's or physician practice's MPT as specified in the Measure Bundle Protocol.~~

(27) ~~[(28) Regional Healthcare Partnership (RHP) plan update--An RHP plan update for DY7-8 that is further updated for DY9-10, as further described in §354.1737 of this division (relating to RHP Plan Update).~~

(28) ~~[(29) Related strategy--A strategy employed by a performer to improve performance on a measure.~~

(29) ~~[(30) Significant volume--For most Category C measures, the denominator is considered to have significant volume if its volume is greater than or equal to 30.~~

(30) ~~[(31) Statewide hospital factor (SHF)--A factor used to determine the MPT that takes into account a hospital's MLIU inpatient days and MLIU outpatient costs compared to all hospitals, as described in §354.1753 of this division.~~

(31) ~~[(32) Statewide hospital ratio (SHR)--A factor used to determine the MPT that takes into account whether a hospital's DY7 DSRIP valuation is higher or lower than would be expected based on the hospital's MLIU inpatient days and MLIU outpatient costs compared to other hospitals, as described in §354.1753 of this division.~~

(32) [(33)] System--A performer's patient care landscape, as defined by the performer, in accordance with the Program Funding and Mechanics Protocol and Measure Bundle Protocol. Essential functions or departments of a performer's provider type are required components that must be included in a performer's system definition.

(33) [(34)] Target population--For a Category C Measure Bundle, the pool of individuals to be included in a measure denominator for which a hospital or physician practice is accountable for improvement.

(34) [(35)] Volume--For Category C measure denominators, the total number of measured units in the denominator. Volume is used to determine the size of the population for which improvement is being measured.

§354.1735. *Participants.*

(a) Anchors.

(1) An anchor must:

(A) serve as the RHP's single point of contact with HHSC, except as specified in rule;

(B) facilitate transparent and inclusive meetings among participants to discuss RHP activities;

(C) coordinate RHP activities to help ensure that participants properly address both the needs of the region and the requirements placed upon the RHP;

(D) coordinate the update of the community needs assessment included in the RHP plan and submit the updated community needs assessment to HHSC, as prescribed by HHSC;

(E) coordinate with the RHP participants to update the RHP plan in accordance with §354.1737 of this division (relating to RHP Plan Update for DY9-10), the Program Funding and Mechanics Protocol, the Measure Bundle Protocol, and all other state or waiver requirements;

(F) hold at least one public meeting before submitting the RHP plan update to HHSC;

(G) [(F)] submit the RHP plan update to HHSC, as prescribed by HHSC;

(H) [(G)] post the approved RHP plan update to the RHP website;

(I) [(H)] develop and submit an annual progress report on behalf of the RHP, in accordance with the Program Funding and Mechanics Protocol and HHSC requirements;

(J) [(I)] develop and submit a learning collaborative plan, in accordance with the Program Funding and Mechanics Protocol and HHSC requirements;

(K) [(J)] ensure that all confidential information obtained through its role as an anchor remains confidential as required by state and federal laws and regulations;

(L) [(K)] ensure that all waiver information provided to it in its capacity as anchor is distributed to the RHP participants; and

(M) [(L)] meet all other requirements as specified in the Program Funding and Mechanics Protocol.

(2) An anchor must not:

(A) request reimbursement from a Medicaid provider for the discharge of the anchor's responsibilities, although an anchor and other governmental entities within the RHP may agree to share such costs;

(B) delegate decision-making responsibilities concerning the interpretation of the waiver, HHSC policy, or actions or decisions that involve the exercise of discretion or judgment;

(C) require any IGT entity to provide DSRIP funds to any performers;

(D) require any participant to act as a DSRIP performer; or

(E) prevent or in any way prohibit the collaboration between an IGT entity and a performer.

(3) An anchor may delegate ministerial functions such as data collection and reporting. Any entity to which ministerial functions are delegated under this division must comply with the roles, responsibilities, and limitations of an anchor.

(4) In addition to any funds received under §354.1747 of this division (relating to Performer Valuations), an anchor may be reimbursed for the cost of its administrative duties conducted on behalf of the RHP. The anchor must provide an IGT to HHSC for the purpose of obtaining federal matching funds in accordance with the Administrative Cost Claiming Protocol so that it can be reimbursed for such costs. An anchor may not recover more than the anchor's actual costs.

(b) IGT entities. An IGT entity:

(1) determines the allocation of its IGT funding consistent with state and federal requirements;

(2) participates in RHP planning;

(3) acting as a performer, selects Category C Measure Bundles or measures in accordance with §354.1753 of this division (relating to Category C Requirements for Performers);

(4) not acting as a performer, cooperates with a performer to select Category C Measure Bundles or measures in accordance with §354.1753 of this division;

(5) provides the non-federal share of DSRIP pool payments for the entities with which it collaborates; and

(6) may review DSRIP data submitted by associated performers.

(c) Performers. A performer:

(1) is one of the following provider types:

(A) hospital;

(B) physician practice;

(C) community mental health center; or

(D) local health department;

(2) submits to the anchor the information required for the RHP plan update, including the performer's selected Category C Measure Bundles or measures and other required information as described in §354.1737 of this division, the Program Funding and Mechanics Protocol, and the Measure Bundle Protocol;

(3) implements core activities to achieve the Category C measure goals in the RHP plan update;

(4) prepares and submits DSRIP data on a semi-annual basis;

(5) prepares and submits reports as required by HHSC and the Centers for Medicare & Medicaid Services;

(6) participates in RHP planning; and

(7) receives DSRIP.

§354.1737. RHP Plan Update for DY9-10.

(a) A performer may receive DSRIP only if HHSC has approved the RHP plan update for DY9-10 for the performer's RHP.

(b) An RHP plan update for DY9-10 must:

(1) meet the requirements listed in the Program Funding and Mechanics Protocol and the Measure Bundle Protocol;

(2) update the RHP's community needs assessment, if needed;

(3) include a list of IGT entities, performers, and other stakeholders involved in the development of the RHP plan update;

(4) include signed certifications from the performer's leadership and the performer's affiliated IGT entities that all the information contained within the RHP plan update for DY9-10 is true and accurate;

(5) describe the processes used to engage stakeholders including the public meetings held;

(6) include the total amount of estimated DSRIP funding to be used by demonstration year (DY);

(7) include for each performer:

(A) an updated definition of the performer's system, if needed;

(B) any updates to the performer's DY7-8 Category A core activities for DY9-10;

(C) updates to the performer's Category B total Patient Population by Provider (PPP) or MLIU PPP for DYs 5-8, if needed;

(D) the forecasted number of Medicaid individuals served in DY9-10 and the forecasted number of LIU individuals served in DY9-10 based on the number of MLIU individuals served in DY7-8;

(E) if the performer is a hospital or physician practice:

(i) the performer's selected Category C Measure Bundles and measures for DY9-10;

(ii) the performer's requests for allowable changes to its selected Category C Measure Bundles and measures, as described in §354.1753(a)(1)(E) of this division (relating to Category C Requirements for Performers), the Program Funding and Mechanics Protocol and Measure Bundle Protocol; and

(iii) the related strategies associated with each of the performer's Category C Measure Bundles for DY9-10. [~~DY7-8 that the performer implemented in DY7-8; and~~]

~~[(iv) the related strategies associated with each of the performer's Category C Measure Bundles for DY9-10 that the performer plans to implement in DY9.]~~

(F) if the performer is a community mental health center or local health department:

(i) the performer's selected Category C measures for DY9-10;

(ii) the performer's requests for allowable changes to its selected Category C measures, as described in §354.1753(b)(1)(E) and §354.1753(c)(1)(F) of this division, the Program Funding and Mechanics Protocol and Measure Bundle Protocol; and

~~(iii) the related strategies associated with each of the performer's Category C measures for DY9-10. [~~DY7-8 that the performer implemented in DY7-8; and~~]~~

~~[(iv) the related strategies associated with each of the performer's Category C measures for DY9-10 that the performer plans to implement in DY9.]~~

(G) the performer's Category D Statewide Reporting Measure Bundle;

(H) the performer's DSRIP valuation amounts; and

(I) the performer's sources of non-federal funds by category and DY; and

(8) include a narrative explaining the performer's rationale for its Category C Measure Bundle and measure selections for DY9-10.

§354.1753. Category C Requirements for Performers.

(a) Requirements for hospitals and physician practices.

(1) Measure Bundle and measure selection.

(A) A hospital or physician practice, with the exception of those described in subparagraph (J) of this paragraph, must select Measure Bundles from the Hospital and Physician Practice Measure Bundle Menu of the Measure Bundle Protocol in accordance with the requirements in subparagraphs (B) - (I) of this paragraph in the RHP plan update for DY9-10 for its RHP.

(B) Each Measure Bundle is assigned a point value for DY9-10 as described in the Measure Bundle Protocol.

(C) A hospital or physician practice is assigned a minimum point threshold (MPT) for Measure Bundle selection as described in paragraphs (6) and (7) of this subsection.

(D) A hospital or physician practice must select Measure Bundles worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If a hospital or physician practice does not select Measure Bundles worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the Measure Bundles it selects.

(E) A hospital or physician practice may request to delete a maximum of 20 points worth of its DY7-8 Measure Bundles and measures for DY9-10 with good cause. In this context, good cause is defined as:

(i) a significant system change, such as a hospital merger;

(ii) updated community needs; or

(iii) a significant change in a Measure Bundle's required system component of outpatient services or hospital services as described in the Measure Bundle Protocol.

~~(F) [(G)]~~ A hospital or physician practice may only select a Measure Bundle for which its denominators for the baseline measurement period for at least half of the required measures in the Measure Bundle have significant volume.

~~(G) [(F)]~~ A hospital or physician practice with a valuation greater than \$2,500,000 per demonstration year (DY) for DY7-8 or with a valuation greater than \$2,000,000 [~~\$2 million~~] in DY10 must:

~~(i)~~ select at least one Measure Bundle with at least one required three-point measure for which its denominator for the baseline measurement period has significant volume; or

(ii) select at least one Measure Bundle with at least one optional three-point measure for which its denominator for the baseline measurement period has significant volume and select at least one optional three-point measure in that Measure Bundle for which its denominator for the baseline measurement period has significant volume.

(H) [(G)] A hospital or physician practice with an MPT of 75 must report at least two population-based clinical outcome measures as P4P as specified in the Measure Bundle Protocol.

(I) [(H)] A hospital or physician practice may only select an optional measure in a selected Measure Bundle for which its denominator for the baseline measurement period has significant volume.

[(I)] Only a hospital with a valuation less than or equal to \$2,500,000 per DY may select a Measure Bundle identified as a rural Measure Bundle in accordance with the requirements in the Measure Bundle Protocol.]

(J) If a hospital or physician practice has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundle(s) appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the hospital or physician practice may request HHSC approval to select measures, rather than Measure Bundles, from the Measure Bundle Protocol. The hospital or physician practice must submit a request for such approval to HHSC prior to the RHP plan update for DY9-10 submission, by a date determined by HHSC. Such a request may be subject to review by the Centers for Medicare & Medicaid Services (CMS). If HHSC and CMS, as appropriate, approve such a request, the following requirements apply:

(i) the hospital's or physician practice's total valuation for DY9 and DY10 may be reduced;

(ii) the hospital or physician practice must select measures from the following menus of the Measure Bundle Protocol in accordance with the requirements in clauses (iii) - (v) of this subparagraph in the RHP plan update for its RHP:

(I) the Measure Bundles on the Hospital and Physician Practice Measure Bundle Menu;

(II) the Community Mental Health Center Measure Menu; or

(III) the Local Health Department Measure Menu;

(iii) each measure in a Measure Bundle on the Hospital and Physician Practice Measure Bundle Menu, and each measure on the Community Mental Health Center Measure Menu and the Local Health Department Measure Menu, is assigned a point value as described in the Measure Bundle Protocol;

(iv) the hospital or physician practice is assigned an MPT for measure selection as described in paragraphs (5) and (6) of this subsection; and

(v) the hospital or physician practice must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If the hospital or physician practice does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(2) DSRIP-attributed population. A hospital or physician practice must determine its DSRIP-attributed population to be applied to its selected Measure Bundles and measures as specified in the Measure Bundle Protocol.

(3) Measure Bundle valuation. Each Measure Bundle selected by a hospital or physician practice for DY9-10 is allocated a percentage of the hospital's or physician practice's Category C valuation that is equal to the Measure Bundle's point value as a percentage of all of the hospital's or physician practice's selected Measure Bundles' point values.

(4) Measure valuation. The valuation for each measure in a selected Measure Bundle is equal to the Measure Bundle valuation divided by the number of measures in the selected Measure Bundle, so that the valuations of the measures in the selected Measure Bundle are equal, with the following exceptions:

(A) If a Measure Bundle includes the [an] innovative measure:

(i) the valuation for the [each] innovative measure in the Measure Bundle is equal to the Measure Bundle valuation divided by the number of [the] measures in the Measure Bundle subtracted by 0.5 for the [each] innovative measure and divided by 2; and

(ii) the valuation for each measure in the Measure Bundle that is not the [an] innovative measure is equal to the Measure Bundle valuation divided by the number of measures in the Measure Bundle subtracted by 0.5 for the [each] innovative measure.

(B) If a hospital's or physician practice's denominator for a required measure or numerator for a population-based clinical outcome measure in a selected Measure Bundle for the baseline measurement period or a performance year has no volume, the measure is removed from the Measure Bundle, and its valuation for the applicable DY is redistributed among the remaining measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume for the applicable DY. The valuation for the applicable DY for each of the remaining measures [in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume] is equal to the valuation for the Measure Bundle for the applicable DY divided by the number of measures for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume, so that the valuations for the applicable DY for the measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume are equal.

(C) If a hospital's or physician practice's denominator for a required measure or numerator for a P4R population-based clinical outcome measure in a selected Measure Bundle for the baseline measurement period or a performance year has insignificant volume, the measure's milestone valuations are adjusted in accordance with subsection (e)(2) of this section.

(5) Milestone valuation. The measure milestones and corresponding valuations for DY9-10 [DY7-8] are as described in subsection (e) of this section.

(6) MPTs for hospitals.

(A) The MPT for hospitals, with the exception of those described in subparagraphs (B) and (C) of this paragraph, is calculated as follows:

(i) First, the hospital's statewide hospital factor (SHF) is equal to (.64 multiplied by (the hospital's Medicaid and

uninsured inpatient days divided by the sum of all hospitals' Medicaid and uninsured inpatient days)) plus (.36 multiplied by (the hospital's Medicaid and uninsured outpatient costs divided by the sum of all hospitals' Medicaid and uninsured outpatient costs)). A hospital's Medicaid and uninsured inpatient days and uninsured outpatient costs are those reported for federal fiscal year 2016 in the Texas Hospital Uncompensated Care Tool.

(ii) Second, the hospital's statewide hospital ratio (SHR) is equal to (the hospital's DY10 valuation divided by the sum of all hospitals' DY10 valuations) divided by the SHF.

(iii) Third, the hospital's MPT is determined as follows:

(I) If the SHR is less than or equal to 3, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000; or

(-b-) 75.

(II) If the SHR is greater than 3 but less than or equal to 10, the MPT is the lesser of:

(-a-) (the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3)); or

(-b-) 75.

(III) If the SHR is greater than 10 and the DY10 valuation is less than or equal to \$15 million, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3); or

(-b-) 40.

(IV) If the SHR is greater than 10 and the DY10 valuation is greater than \$15 million, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3); or

(-b-) 75.

(B) If a hospital does not have the data needed for the SHF calculation in paragraph (5)(A)(i) of this subsection, or if a hospital did not participate in DSRIP during the initial demonstration period or DY6, its MPT is the lesser of:

(i) the hospital's DY10 valuation divided by \$500,000; or

(ii) 75.

(C) The MPT for a hospital for DY9-10 must not be reduced by more than 10 points from the hospital's MPT for DY7-8.

(D) If a hospital has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundle(s) appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the hospital may request HHSC approval for a reduced MPT equal to the sum of the points for all the Measure Bundles for which the hospital could reasonably report on at least half of the required measures in the Measure Bundle. The hospital must submit a request for such approval to HHSC prior to the RHP plan update submission, by a date determined by HHSC. Such a request may be subject to review by the Centers for Medicare & Medicaid Services (CMS). If HHSC and CMS, as appropriate, approve such a request, the hospital's total valuation for DY9 and DY10 may be reduced.

(7) MPTs for physician practices.

(A) The MPT for a physician practice for DY9-10, with the exception of a physician practice described in subparagraph (C) of this paragraph, is the lesser of:

(i) the physician practice's DY10 valuation divided by \$500,000; or

(ii) 75.

(B) The MPT for a physician practice for DY9-10 must not be reduced by more than 10 points from the physician practice's MPT for DY7-8.

(C) If a physician practice has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundles appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the physician practice may request HHSC approval for a reduced MPT equal to the sum of the points for all the Measure Bundles for which the physician practice could reasonably report on at least half of the required measures in the Measure Bundle. The physician practice must submit a request for such approval to HHSC prior to the RHP plan update submission, by a date determined by HHSC. Such a request may be subject to review by CMS. If HHSC and CMS, as appropriate, approve such a request, the physician practice's total valuation for DY9 and DY10 may be reduced.

(b) Requirements for community mental health centers (CMHCs).

(1) Measure selection.

(A) A CMHC must select measures from the Community Mental Health Center Measure Menu of the Measure Bundle Protocol.

(B) Each measure is assigned a point value as described in the Measure Bundle Protocol.

(C) A CMHC is assigned an MPT for measure selection as described in paragraph (3) of this subsection.

(D) A CMHC must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If a CMHC does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(E) A CMHC may request to delete a maximum of 20 points worth of its DY7-8 measures for DY9-10 with good cause. In this context, good cause is defined as:

(i) a significant system change; or

(ii) updated community needs.

(F) ~~[(E)]~~ A CMHC may only select a measure for which its denominator for the baseline measurement period has significant volume.

(G) ~~[(F)]~~ A CMHC must select at least two measures.

(H) ~~[(G)]~~ A CMHC with a valuation greater than \$2,500,000 per DY for DY7-8 and a valuation of more than \$2,000,000 for DY10 must select at least one three-point measure.

(2) DSRIP-attributed population. A CMHC must determine its DSRIP-attributed population to be applied to its selected measures as specified in the Measure Bundle Protocol.

(3) Measure valuation. All measures selected by a CMHC for DY9-10 are valued equally.

(4) Milestone valuation. The measure milestones and corresponding valuations for DY9-10 are as described in subsection (e) of this section.

(5) MPTs.

(A) A CMHC's MPT is the lesser of:

(i) the CMHC's DY10 valuation divided by the standard point valuation (\$500,000); or

(ii) 40.

(B) A CMHC's MPT for DY9-10 must not be reduced by more than 10 points from the CMHC's MPT for DY7-8.

(c) Requirements for local health departments (LHDs).

(1) Measure selection.

(A) An LHD must select measures from[~~;~~]

~~[(i)]~~ the Local Health Department Measure Menu of the Measure Bundle Protocol, ~~unless~~ [~~;~~ ~~or~~]

~~[(ii)]~~ the LHD selected one of its DY6 Category 3 pay-for-performance (P4P) measures for DY7-8, in which case the LHD may select that measure for DY9-10.

~~[(B)]~~ An LHD may not select the same measure from both the Local Health Department Measure Menu of the Measure Bundle Protocol and its DY6 Category 3 P4P measures.]

~~[(C)]~~ If an LHD's DY6 Category 3 P4P measures include multiple versions of the same measure, the LHD may select multiple versions of that measure, but the points associated with that measure will only count once toward the LHD's MPT.]

(B) ~~[(D)]~~ Each measure on the Local Health Department Measure Menu is assigned a point value as described in the Measure Bundle Protocol.

(C) ~~[(E)]~~ Each LHD DY6 Category 3 P4P measure is assigned a point value as described in the Measure Bundle Protocol.

(D) ~~[(F)]~~ An LHD is assigned an MPT for measure selection as described in paragraph (4) of this subsection.

(E) ~~[(G)]~~ An LHD must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If an LHD does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(F) An LHD may request to delete a maximum of 20 points worth of its DY7-8 measures for DY9-10 with good cause. In this context, good cause is defined as:

(i) a significant system change; or

(ii) updated community needs.

(G) ~~[(H)]~~ An LHD may only select a measure for which its denominator for the baseline measurement period has significant volume.

(H) ~~[(I)]~~ An LHD must select at least two measures.

(I) ~~[(J)]~~ An LHD with a valuation of more than \$2,500,000 per DY for DY7-8 and a valuation of more than \$2,000,000 for DY10 must select at least one three-point measure.

(2) DSRIP-attributed population. An LHD must determine its DSRIP-attributed population to be applied to its selected measures as specified in the Measure Bundle Protocol.

(3) Measure valuation. All measures selected by a LHD for DY9-10 are valued equally.

(4) Milestone valuation. The measure milestones and corresponding valuations for DY9-10 are as described in subsection (e) of this section.

(5) MPTs.

(A) An LHD's MPT is the lesser of:

(i) the LHD's DY10 valuation divided by the standard point valuation (\$500,000); or

(ii) 20.

(B) An LHD's MPT for DY9-10 must not be reduced by more than 10 points from the LHD's MPT for DY7-8.

(d) Measurement periods.

(1) Baseline measurement periods.

(A) The baseline measurement period for a measure selected for DY7-10 is calendar year 2017 with the following exceptions:

(i) the baseline measurement period for a DY6 Category 3 P4P measure selected by a LHD is DY6;

(ii) HHSC approved the measure to have a shorter baseline measurement period consisting of no fewer than six months as specified in the Program Funding and Mechanics Protocol and HHSC guidance;

(iii) HHSC approved the measure to have a delayed baseline measurement period that ended no later than September 30, 2018, as specified in the Program Funding and Mechanics Protocol and HHSC guidance; and

(iv) any other exception specified in the Measure Bundle Protocol or one of its appendices.

(B) The baseline measurement period for a measure newly selected for DY9-10 is calendar year 2019 with the following exceptions:

(i) a performer that demonstrates good cause may request for a measure to have a shorter baseline measurement period consisting of no fewer than six months as specified in the Program Funding and Mechanics Protocol and HHSC guidance;

(ii) a performer that demonstrates good cause may request for a measure to have a delayed baseline measurement period that ends no later than September 30, 2020, as specified in the Program Funding and Mechanics Protocol and HHSC guidance; and

(iii) any other exception specified in the Measure Bundle Protocol or one of its appendices.

(2) Performance measurement periods. The performance measurement periods for a P4P measure are as follows:

(A) Performance Year (PY) 1 for a measure is calendar year 2018 unless otherwise specified in the Measure Bundle Protocol or one of its appendices;

(B) PY2 for a measure is calendar year 2019 unless otherwise specified in the Measure Bundle Protocol or one of its appendices;

(C) PY3 for a measure is calendar year 2020 unless otherwise specified in the Measure Bundle Protocol or one of its appendices; and

(D) PY4 for a measure is calendar year 2021 unless otherwise specified in the Measure Bundle Protocol or one of its appendices. [; and]

~~[(E) PY5 for a measure is calendar year 2022 otherwise specified in the Measure Bundle Protocol or one of its appendices.]~~

(3) Reporting measurement periods. The reporting measurement periods for a pay-for-reporting (P4R) measure are as follows unless otherwise specified in the Measure Bundle Protocol:

- (A) Reporting Year (RY) 1 for a measure is DY7;
- (B) RY2 for a measure is DY8;
- (C) RY3 for a measure is DY9; and
- (D) RY4 for a measure is DY10.

(e) Measure milestones.

(1) The milestones and corresponding valuations for DY9-10 are as follows, with the exceptions specified in paragraphs (2) and (3) of this subsection:

~~Figure: 1 TAC §354.1753(e)(1)~~

~~[Figure: 1 TAC §354.1753(e)(1)]~~

(2) If a hospital's or physician practice's denominator for a required measure or numerator for a P4R population-based clinical outcome measure in a selected Measure Bundle for the baseline measurement period or a performance measurement period has insignificant volume, the valuation for the measure's goal achievement milestone for the DY is redistributed among the goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance measurement period has significant volume for the applicable DY. The valuations for the goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume for the DY are calculated as follows:

(A) the valuation for the DY9 goal achievement milestone is equal to 75 [67] percent of the valuation for the Measure Bundle divided by the number of measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume, so that the valuations for the DY9 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume are equal; and

(B) the valuation for the DY10 goal achievement milestone is equal to 75 [67] percent of the valuation for the Measure Bundle divided by the number of measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume, so that the valuations for the DY10 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume are equal.

(3) Measures with multiple parts. Some P4P measures have multiple parts, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(A) A measure with multiple parts has one baseline reporting milestone per DY, one PY reporting milestone per DY, and multiple goal achievement milestones per DY.

(B) The valuation for each measure part's goal achievement milestone is equal to the measure's total goal achievement mile-

stone valuation divided by the number of measure parts so that the measure parts' goal achievement milestone valuations are equal.

(C) All measure parts' baseline reporting milestones must be reported during the same reporting period.

(D) All measure parts' PY reporting milestones must be reported during the same reporting period.

(E) Each measure part's goal achievement milestone will have its own goal. Therefore, the percent of goal achieved, as described in §354.1757 of this division (relating to Disbursement of Funds) will be determined for a measure part's goal achievement milestone independently of the percent of goal achieved for the other measure parts' goal achievement milestones.

(4) For measures newly selected for DY9-10, a performer must report a baseline for a measure, and HHSC must approve the reported baseline for reporting purposes, before a performer can report PY3 (or PY4 if HHSC approved the use of a delayed baseline measurement period for the measure).

(A) A performer must adhere to measure specifications and maintain a record of any variances approved by HHSC prior to reporting a baseline for a measure.

(B) HHSC's approval of a reported baseline for reporting purposes does not constitute approval for a performer to report a measure outside measure specifications. If at any point HHSC or the independent assessor finds that a performer is reporting a measure outside measure specifications, reporting milestone payment and goal achievement milestone payment may be withheld or recouped while the performer works to bring reporting into compliance with measure specifications.

(5) A performer must report a P4P measure's reporting milestone and goal achievement milestone for a given PY during the same reporting period, with exceptions for P4P measures with a delayed baseline measurement period.

(f) Measure eligible denominator population.

(1) Each Measure Bundle for hospitals and physician practices has a target population as specified in the Measure Bundle Protocol.

(2) A measure's eligible denominator population must include all individuals served by the performer's system during a given measurement period that are included in the performer's DSRIP-attributed population and the target population for a measure for hospitals and physician practices, and that meet the measure's specifications as specified in the Measure Bundle Protocol.

(3) A performer may not use a performer-specific facility, co-morbid condition, age, gender, race, or ethnicity subset not otherwise specified in the Measure Bundle Protocol.

(4) Reporting milestones.

(A) A hospital or physician practice must do the following to be eligible for payment of a measure's reporting milestones for each DY, with the exceptions described in subparagraphs (C) and (D) of this paragraph:

(i) report its performance on the measure for the all-payer, Medicaid-only, and Low-income Uninsured-only (LIU-only) payer types; and

(ii) update reporting [report] on related strategies associated with each Measure Bundle.

(B) A CMHC or LHD must do the following to be eligible for payment of a measure's reporting milestones for each DY, with the exceptions described in subparagraphs (C) and (D) of this paragraph:

(i) report its performance on the measure for the all-payer, Medicaid-only, and Low-income Uninsured-only (LIU-only) payer types; and

(ii) update reporting [report] on related strategies associated with each measure or group of measures.

(C) A performer that demonstrates good cause may request in the RHP plan update submission to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(D) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(5) Goal achievement milestones. Payment for a P4P measure's goal achievement milestone is based on the performer's performance on the measure for the MLIU payer type.

(A) A performer that demonstrates good cause may request in the RHP plan update submission that payment for a P4P measure's goal achievement milestone be based on the performer's performance on the measure for the all-payer, Medicaid-only, or LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(B) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to change the payer type on which payment for a P4P measure's goal achievement milestone is based as specified in the Program Funding and Mechanics Protocol.

(g) Methodology for P4P measure goal setting.

(1) A P4P measure's goals are set as an improvement over the baseline.

(2) A P4P measure is designated as either Quality Improvement System for Managed Care (QISMC) or Improvement over Self (IOS) as specified in the Measure Bundle Protocol. A P4P measure designated as QISMC has a defined High Performance Level (HPL) and Minimum Performance Level (MPL) based on national or state benchmarks.

(3) If a P4P measure is selected for DY7-10, the goals for its goal achievement milestones for DY9-10 are set as follows:

Figure: 1 TAC §354.1753(g)(3)

[Figure: † TAC §354.1753(g)(3)]

(4) If a P4P measure is newly selected for DY9-10, the goals for its goal achievement milestones for DY9-10 are set as follows:

Figure: 1 TAC §354.1753(g)(4)

[Figure: † TAC §354.1753(g)(4)]

{(5) A performer may request HHSC approval to use a numerator of zero for the baseline measurement period for certain P4P measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.}

(5) [(A)] If a performer received [receives] HHSC approval to use a numerator of zero for the baseline measurement period for a

DY7-8 P4P measure, and the performer decides to [that is] continue that measure in [continuing into] DY9-10, the goals [goal] for the DY9 and DY10 goal achievement milestones [milestone] are determined in accordance with paragraph (3) of this subsection using an updated baseline that is set at the PY1 rate [will be equal to a 12.5% gap closure between the 75th percentile and the HPL, and the goal for the DY10 goal achievement milestone will be equal to a 15% gap closure between the 75th percentile and the HPL, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol].

{(B) If a performer receives HHSC approval to use a numerator of zero for the baseline measurement period for a P4P measure that is newly selected for DY9-10, the goal for the DY9 goal achievement milestone will be equal to the 75th percentile, and the goal for the DY10 goal achievement milestone will be equal to a 10% gap closure between the 75th percentile and the HPL, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.}

{(6) Certain QISMC measures with baselines below the MPL have alternate QISMC goals, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol. For a measure that is continuing into DY9-10, the DY9 goal will be a 22.5% gap closure towards HPL, and the DY10 goal will be a 25% gap closure towards HPL. For a measure that is newly selected for DY9-10, the DY9 goal will be a 10% gap closure towards HPL, and the DY10 goal will be a 20% gap closure towards HPL.}

(h) Carry forward policy.

(1) Carry forward of reporting. If a performer does not report a measure's baseline reporting milestone or performance year reporting milestone during the first reporting period after the end of the milestone's measurement period, the performer may request to carry forward reporting of the milestone to the next reporting period.

(2) Carry forward of achievement.

(A) A performer may request to carry forward achievement of a measure's DY9 goal achievement milestone so that the DY9 goal achievement milestone may be achieved in PY3 or PY4, [and the DY10 goal achievement milestone may be achieved in PY4 or PY5,]with the exception described in subparagraph (B) of this paragraph.

(B) If a measure newly selected for DY9-10 has a delayed baseline measurement period, a performer will carry forward achievement of its goal achievement milestone so that the DY9 goal achievement milestone may be achieved in PY4.

(C) The performer must report the carried forward achievement of a measure's goal achievement milestone during the first reporting period after the end of the milestone's carried forward measurement period.

§354.1757. Disbursement of Funds.

(a) Category A and DSRIP payments. If a performer fails to fulfill all of the Category A requirements described in §354.1749 of this division (relating to Category A Requirements for Performers) for a demonstration year (DY), any DSRIP payments the performer received for the DY will be recouped, and prospective DSRIP payments to the performer will be withheld.

(1) DSRIP payments for DY9 include payments for DY9 Category B, Category C, or Category D milestones.

(2) DSRIP payments for DY10 include payments for DY10 Category B, Category C, or Category D milestones.

(b) Basis for payment of Category B. A performer's payment for its MLIU PPP milestone for a DY is calculated as follows.

(1) If the performer's MLIU PPP goal achievement is greater than or equal to 100 percent minus its allowable MLIU PPP goal variation, the performer's MLIU PPP milestone payment is equal to 100 percent of its MLIU PPP milestone valuation.

(2) If the performer's MLIU PPP goal achievement is greater than or equal to 90 percent, and less than 100 percent minus its allowable MLIU PPP goal variation, the performer's MLIU PPP milestone payment is equal to 90 percent of its MLIU PPP milestone valuation.

(3) If the performer's MLIU PPP goal achievement is greater than or equal to 75 percent, and less than 90 percent, the performer's MLIU PPP milestone payment is equal to 75 percent of its MLIU PPP milestone valuation.

(4) If the performer's MLIU PPP goal achievement is greater than or equal to 50 percent, and less than 75 percent, the performer's MLIU PPP milestone payment is equal to 50 percent of its MLIU PPP milestone valuation.

(5) If the performer's MLIU PPP goal achievement is less than 50 percent, the performer does not receive a MLIU PPP milestone payment.

(c) Basis for payment of Category C.

(1) Reporting milestones. A performer must fully achieve a reporting milestone to be eligible for payment related to the milestone.

(2) P4P measure goal achievement milestones. A P4P measure has a goal achievement milestone for each DY. With the exception of P4P measure goal achievement milestones described in subparagraph (B) of this paragraph, partial payment for P4P measure goal achievement milestones is available in quartiles for partial achievement measured over baseline in Performance Year (PY) 1, PY2, PY3, and PY4, and PY5.

(A) To calculate the payment for a P4P measure goal achievement milestone, multiply the milestone valuation by the achievement value calculated in clause (ii) of this subparagraph.

(i) The percent of the milestone's goal achieved by the performer is determined as follows.

(I) Measures with a positive directionality where higher scores indicate improvement:

(-a-) DY7 achievement = $(\text{PY1 Achieved} - \text{Baseline}) / (\text{DY7 Goal} - \text{Baseline})$.

(-b-) Carryforward of DY7 achievement = $(\text{PY2 Achieved} - \text{Baseline}) / (\text{DY7 Goal} - \text{Baseline})$.

(-c-) DY8 achievement = $(\text{PY2 Achieved} - \text{Baseline}) / (\text{DY8 Goal} - \text{Baseline})$.

(-d-) Carryforward of DY8 achievement = $(\text{PY3 Achieved} - \text{Baseline}) / (\text{DY8 Goal} - \text{Baseline})$.

(-e-) DY9 achievement = $(\text{PY3 Achieved} - \text{Baseline}) / (\text{DY9 Goal} - \text{Baseline})$.

(-f-) Carryforward of DY9 achievement = $(\text{PY4 Achieved} - \text{Baseline}) / (\text{DY9 Goal} - \text{Baseline})$.

(-g-) DY10 achievement = $(\text{PY4 Achieved} - \text{Baseline}) / (\text{DY10 Goal} - \text{Baseline})$.

~~{(-h-) Carryforward of DY10 achievement = $(\text{PY5 Achieved} - \text{Baseline}) / (\text{DY10 Goal} - \text{Baseline})$ }~~

(II) Measures with a negative directionality where lower scores indicate improvement:

(-a-) DY7 achievement = $(\text{Baseline} - \text{PY1 Achieved}) / (\text{Baseline} - \text{DY7 Goal})$.

(-b-) Carryforward of DY7 achievement = $(\text{Baseline} - \text{PY2 Achieved}) / (\text{Baseline} - \text{DY7 Goal})$.

(-c-) DY8 achievement = $(\text{Baseline} - \text{PY2 Achieved}) / (\text{Baseline} - \text{DY8 Goal})$.

(-d-) Carryforward of DY8 achievement = $(\text{Baseline} - \text{PY3 Achieved}) / (\text{Baseline} - \text{DY8 Goal})$.

(-e-) DY9 achievement = $(\text{Baseline} - \text{PY3 Achieved}) / (\text{Baseline} - \text{DY9 Goal})$.

(-f-) Carryforward of DY9 achievement = $(\text{Baseline} - \text{PY4 Achieved}) / (\text{Baseline} - \text{DY9 Goal})$.

(-g-) DY10 achievement = $(\text{Baseline} - \text{PY4 Achieved}) / (\text{Baseline} - \text{DY10 Goal})$.

~~{(-h-) Carryforward of DY10 achievement = $(\text{Baseline} - \text{PY5 Achieved}) / (\text{Baseline} - \text{DY10 Goal})$ }~~

(ii) The achievement value is determined as follows.

(I) If 100 percent of the goal is achieved, the achievement value is 1.0.

(II) If less than 100 percent but at least 75 percent of the goal is achieved, the achievement value is 0.75.

(III) If less than 75 percent but at least 50 percent of the goal is achieved, the achievement value is 0.5.

(IV) If less than 50 percent but at least 25 percent of the goal is achieved, the achievement value is 0.25.

(V) If less than 25 percent of the goal is achieved, the achievement value is 0.

(B) If a P4P measure designated as Quality Improvement System for Managed Care has a baseline above the High Performance Level, the performer must achieve 100 percent of the goal achievement milestone to be eligible for payment of the milestone; there is no payment for partial achievement.

(C) If a P4P measure identified as a hospital safety measure in the Measure Bundle Protocol has perfect performance at baseline, the measure's goal achievement milestone is eligible for full payment for maintenance of high performance.

(i) Perfect performance at baseline means that for the baseline measurement period, the performer reports:

(I) zero numerator cases; and

(II) at least one denominator case.

(ii) Maintenance of high performance means that for a performance year, the performer reports:

(I) zero numerator cases; and

(II) one numerator case that was not preventable.

(iii) If a performer wishes to report maintenance of high performance for a performance year for a measure that is eligible for full payment for maintenance of high performance, the performer must determine a valid definition for a numerator case that is not preventable and submit documentation of that definition to HHSC.

(iv) If HHSC determines that maintenance of high performance is achieved, the achievement value for the goal achievement milestone is 1.0.

(d) Basis for payment of Category D. A performer must report on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type for a DY in accordance with §354.1755(d) of this division (relating to Category D Requirements for Performers) to be eligible for payment of the measure for that DY.

(e) At no point may a performer receive a DSRIP payment for a milestone more than two years after the end of the DY in which the milestone is to be completed.

(f) If a performer does not complete the remaining milestones as described in §354.1751 of this division (relating to Category B Requirements for Performers) or §354.1753 of this division (relating to Category C Requirements for Performers), or the Category D - Statewide Reporting Measure Bundle measures as described in subsection (d) of this section, the associated DSRIP funding is forfeited by the performer.

(g) Once the action associated with a milestone is reported by the performer as complete, that milestone may not be counted again toward DSRIP payment calculations.

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 June 29, 2020.

TRD-202002646

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 923-0644



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §§5.1, 5.3 - 5.7

The Texas Department of Agriculture (Department) proposes the repeal of rules at 4 Texas Administrative Code (TAC), Chapter 5, §§5.1, 5.3, 5.4, 5.5, 5.6, and 5.7, regarding Fuel Quality. These proposed changes are referred to as "proposed rules."

The proposed rules are in response to Senate Bill (SB) 2119, 86th Legislature, Regular Session (2019), which transferred the Motor Fuel Metering and Quality Program (Program) from the Department to the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (TDLR) and which, effective September 1, 2020, creates new Texas Occupations Code, Chapter 2310, Motor Fuel Metering and Quality. The Commission has proposed new 16 TAC, Chapter 97, to administer and regulate the Program.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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

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

2. Implementation of the proposed rules requires the elimination of existing employee positions at the Department. Section 18.80, Article IX of the General Appropriations Act for the 2020-21 Biennium increased the number of full-time equivalent (FTE) employee positions at TDLR by 68.0 FTEs each year of the biennium. This section also decreased the number of FTEs at the Department by 35.9 FTEs each fiscal year, therefore new employee positions will be created at TDLR.

3. Implementation of the proposed rules requires a decrease in future legislative appropriations to the agency.

4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules will result in a decrease in fees paid to the agency in each year the proposed rules are in effect, due to the elimination of the fuel quality program, including registration and renewal fees.

5. The proposed rules do not create a new regulation.

6. The proposed rules repeal existing regulations. The proposed rules repeal requirements which no longer apply, as a result of the passage of SB 2119. Portions of the program rules have been proposed for adoption by TDLR in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3409).

7. The proposed rules decrease the number of individuals subject to the rule's applicability.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Shirley Beaulieu, Chief Financial Officer, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

Ms. Shirley Beaulieu has determined that for each year of the first five years the proposed rules are in effect reductions in costs to the state through the Department will be affected as follows: (1) in the first year, an estimated reduction in costs of \$5,049,224; (2) in the second year, an estimated reduction in costs of \$5,049,224; (3) in the third year, an estimated reduction in costs of \$5,049,224; (4) in the fourth year, an estimated reduction in costs of \$5,049,224; and (5) in the fifth year, an estimated reduction in costs of \$5,049,224.

Ms. Shirley Beaulieu has determined that for each year of the first five years the proposed rules are in effect, revenue to the state through the Department will be affected as follows: (1) in the first year, an estimated loss in revenue of \$6,936,302; (2) in the second year, an estimated loss in revenue of \$6,936,302; (3) in the third year, an estimated loss in revenue of \$6,936,302; (4) in the fourth year, an estimated loss in revenue of \$6,936,302; and (5) in the fifth year, an estimated loss in revenue of \$6,936,302. This will be offset by an increase in revenue to TDLR, as detailed by proposed rules published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3409).

PUBLIC BENEFITS: Ms. Christina C. Osborn, Director for Consumer Product Protection, Agriculture and Consumer Protection Division has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the elimination of rules which are no longer administered by the Department which could lead to confusion for consumers and the regulated industries.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Ms. Christina C. Osborn has determined that for each year of the first five-year period the proposed rules are in effect, there will be no additional costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, are not required.

Comments on the proposed rules may be submitted to Ms. Christina C. Osborn, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@texasagriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The rules are proposed under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the proposal are those set forth in Texas Agriculture Code, Chapter 17. No other statutes, articles, or codes are affected by the proposed rules.

§5.1. *Definitions.*

§5.3. *Automotive Fuel Rating.*

§5.4. *Records.*

§5.5. *Inspections.*

§5.6. *Fees.*

§5.7. *Minimum Fuel Standards.*

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 July 6, 2020.

TRD-202002763

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 936-9360



CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (Department) proposes the amendment of rules at 4 Texas Administrative Code (TAC), Chapter 12, Subchapter A, §12.1; Subchapter B, §§12.11, 12.12, 12.13, 12.15; Subchapter E, §12.40, regarding Weights and Measures. These proposed changes are referred to as "proposed rules."

The proposed rules are in response to Senate Bill (SB) 2119, 86th Legislature, Regular Session (2019), which transferred the Motor Fuel Metering and Quality Program (Program) from the Department to the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (TDLR) and which, effective September 1, 2020, creates new Texas Occupations Code, Chapter 2310, Motor Fuel

Metering and Quality. The Commission has proposed new 16 TAC, Chapter 97, to administer and regulate the Program.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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

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

2. Implementation of the proposed rules requires the elimination of existing employee positions at the Department. Section 18.80, Article IX of the General Appropriations Act for the 2020-21 Biennium increased the number of full-time equivalent (FTE) employee positions at TDLR by 68.0 FTEs each year of the biennium. This section also decreased the number of FTEs at the Department by 35.9 FTEs each year, therefore new employee positions will be created at TDLR.

3. Implementation of the proposed rules requires a decrease in future legislative appropriations to the agency.

4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules will result in a decrease in fees paid to the agency in each year the proposed rules are in effect, due to the elimination of the fuel quality program, including registration and renewal fees.

5. The proposed rules do not create a new regulation.

6. The proposed rules repeal existing regulations. The proposed rules repeal requirements which no longer apply, as a result of the passage of SB 2119. Portions of the program rules have been proposed for adoption by TDLR in the May 22, 2020 issue of the *Texas Register* (45 TexReg 3409).

7. The proposed rules decrease the number of individuals subject to the rule's applicability.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Shirley Beaulieu, Chief Financial Officer, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

Ms. Shirley Beaulieu has determined that for each year of the first five years the proposed rules are in effect reductions in costs to the state through the Department will be affected as follows: (1) in the first year, an estimated reduction in costs of \$5,049,224; (2) in the second year, an estimated reduction in costs of \$5,049,224; (3) in the third year, an estimated reduction in costs of \$5,049,224; (4) in the fourth year, an estimated reduction in costs of \$5,049,224; and (5) in the fifth year, an estimated reduction in costs of \$5,049,224.

Ms. Shirley Beaulieu has determined that for each year of the first five years the proposed rules are in effect, revenue to the state through the Department will be affected as follows: (1) in the first year, an estimated loss in revenue of \$6,936,302; (2) in

the second year, an estimated loss in revenue of \$6,936,302; (3) in the third year, an estimated loss in revenue of \$6,936,302; (4) in the fourth year, an estimated loss in revenue of \$6,936,302; and (5) in the fifth year, an estimated loss in revenue of \$6,936,302. This will be offset by an increase in revenue to TDLR, as detailed by proposed rules published in the May 22, 2020 issue of the *Texas Register* (45 TexReg 3409).

PUBLIC BENEFITS: Ms. Christina C. Osborn, Director for Consumer Product Protection, Agriculture and Consumer Protection Division has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the elimination of rules which are no longer administered by the Department which could lead to confusion for consumers and the regulated industries.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Ms. Christina C. Osborn has determined that for each year of the first five-year period the proposed rules are in effect, there will be no additional costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, are not required.

Comments on the proposed rules may be submitted to Ms. Christina C. Osborn, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@texasagriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §12.1

The rules are proposed under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the proposal are those set forth in Texas Agriculture Code, Chapter 13. No other statutes, articles, or codes are affected by the proposed rules.

§12.1 Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 13, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

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

(3) **Audit**--An official TDA administrative review completed by a Representative of the Commissioner of all [fuel quality samples and] device inspections, tests and calibrations records and/or related documentation.

(4) - (12) (No change.)

(13) **Inspection**--The act of examining, testing, or calibrating a weighing or measuring device, [or motor fuel metering device,] including TDA audits, service observations and onsite facility review duties.

(14) - (16) (No change.)

~~(17) Motor fuel metering device--A liquid measuring device used to dispense motor fuel for commercial sale at a flow rate of 20 gallons per minute or less~~

~~[(18) Motor fuel dispenser--A liquid measuring device used to dispense motor fuel for commercial sale at a flow rate of greater than 20 gallons per minute.]~~

~~(17) [(19)] Official certificate--A certificate declaring the accurate weight or measure of a commodity which includes: the time and date the weight or measure was taken, signature and license number of the public weigher, and the seal of the department.~~

~~(18) [(20)] OIML--International Organization of Legal Metrology.~~

~~(19) [(21)] Operator of a Device--A person operates a device if the person collects or distributes payments for a commercial transaction for which the device is used; oversees the day-to-day operation of the device; or owns, leases, manages, or otherwise controls the physical location of the device or the device itself.~~

~~(20) [(22)] Out-of-Order tag--A notice attached to a device directing that the device may not be used for commercial service.~~

~~(21) [(23)] Person--An individual or a corporation, partnership, limited liability company, business trust, trust, association, or other organization, estate, government or governmental subdivision or agency, or other legal entity.~~

~~(22) [(24)] Place in service--An approval for the device to be placed into commercial operation.~~

~~(23) [(25)] Public Weigher--A business appointed to issue an official certificate in Texas.~~

~~(24) [(26)] Ranch scale--A livestock scale which is located on a private ranch and which has a capacity of 5,000 pounds or greater.~~

~~(25) [(27)] Representative of the Commissioner--An individual employed by the Department, authorized to perform one or more of the following: audits, reviews, inspections, and/or service observations under specified chapters of the Texas Agriculture Code.~~

~~[(28) Representative of the Department--A licensed service company and/or licensed technician acting on behalf of the Department to complete fuel quality sample collections, inspections, tests, and calibrations, on motor fuel metering devices as per Texas Agriculture Code, Chapter 13, Subchapter I.]~~

~~(26) [(29)] Service Company--A person who holds a service company license issued by the Department under this chapter, also referred to as a Licensed Service Company (LSC).~~

~~(27) [(30)] Service report--A prescribed report, prepared by a service technician and filed with the Department by a service company, describing the services performed on a device or a set of devices by the technician.~~

~~(28) [(31)] Service Technician--An individual who holds a service technician license issued by the Department under this chapter, also referred to as a Licensed Service Technician (LST).~~

~~(29) [(32)] Sub-kit--A subdivided series of test standards that weigh a total of not less than one pound in avoirdupois units and whose smallest test standard weighs not more than one-sixteenth (1/16) ounce or five-thousandths (0.005) pound.~~

~~(30) [(33)] Test--A field examination of a device to determine compliance with the requirements of this chapter.~~

~~(31) [(34)] Test Standard--A certified weight or measure used to test a device.~~

~~(32) [(35)] Test kit--A collection of test standards that collectively weigh 30 pounds and that consists of one sub-kit, at least two one-pound standards, and any other combination of standards that al-~~

lows a scale with a capacity of 30 pounds or less be tested in one-pound increments to capacity.

(33) [(36)] Service Observation--An official TDA observation completed by a Representative of the Commissioner on Service Technicians that occurs periodically to ensure LSC and LST compliance with the applicable standards of [fuel quality sample collection and] device inspection, testing, and calibrating.

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 July 6, 2020.

TRD-202002764

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 936-9360



SUBCHAPTER B. DEVICES

4 TAC §§12.11 - 12.13, 12.15

The rules are proposed under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the proposal are those set forth in Texas Agriculture Code, Chapter 13. No other statutes, articles, or codes are affected by the proposed rules.

§12.11. *Registration of Commercial Weighing and Measuring Devices.*

(a) - (h) (No change.)

(i) Public Notice of Registration Required. A person registering a location under this section shall prominently display at the location both the person's Weights and Measures Certificate of Registration and the required number of consumer information stickers in the manner provided by this subsection.

(1) (No change.)

(2) Consumer Information Sticker. A person registering a location under this section shall prominently display a consumer information sticker at the location as follows:

[(A) Motor Fuel Metering Devices and Motor Fuel Dispensing Devices. Except for meters on transport vehicles, a single consumer information sticker shall be affixed to each face of each dispensing unit, regardless of the number of devices incorporated into the unit, so as to be in plain sight of and legible to the average consumer accessing the unit for any purpose. A meter on a transport vehicle is exempt from the requirement to display a consumer information sticker.]

(A) [(B)] [Other] Devices. A single consumer information sticker shall be placed on or near each device so as to be in plain sight of and legible to the average consumer accessing the device for any purpose or for whom transactions are to be conducted by the operator using the device.

(B) [(C)] Damaged, Destroyed, Lost, or Illegible Consumer Information Sticker. If a consumer information sticker becomes damaged, destroyed, lost, or otherwise illegible so that any part of the information on the sticker is no longer fully legible and in compliance

with the requirements of this section, the sticker shall be replaced using the procedure in subparagraph (E) of this paragraph.

(C) [(D)] Obstruction of Device Operation Prohibited. A consumer information sticker shall not be placed directly on a device if such placement does, will, or may affect the accuracy, readability, or lawful operation of the device

(D) [(E)] Obtaining Consumer Information Stickers. Consumer [For devices registered with the department prior to September 1, 2011, consumer information stickers will be issued by the department via mail separate from the registration certificate, sufficient for the number of dispensing units (motor fuel dispensing devices) or devices (other devices) in operation at the registered location. For devices registered with the department on or after September 1, 2011, consumer] information stickers will be issued via mail with the registration certificate, sufficient for the number of [dispensing units (motor fuel dispensing devices) or] devices [(other devices)] in operation at the registered location.

(E) [(F)] Obtaining Replacement Consumer Information Stickers. Replacement consumer information stickers necessary to comply with subparagraph (B) [(C)] of this paragraph shall be obtained from the department in quantities of eight stickers per page by:

(i) - (ii) (No change.)

[(j) Calibration required for device registration: Effective September 1, 2017, all motor fuel metering devices with a maximum flow rate of 20 gallons per minute or less and used for motor fuel sales must be calibrated by a Representative of the Department as follows:]

[(1) Device Registration Certificate Application: All applicants are required to submit and attach calibration documentation, conducted on behalf of the named applicant, on all motor fuel metering devices at the facility, to the device registration application submitted to the Department pursuant to §13.1015 and §13.1016 of the Code.]

[(2) Device Registration Certificate Renewal: Not later than the facility's device registration certificate renewal date, on or after September 1, 2017, and at least every two years, thereafter from the previous calibration date, calibration documentation shall be submitted to the Department upon each annual renewal, pursuant to §13.1015 and §13.1016 of the Code.]

§12.12. *Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers.*

(a) Devices. For the following device types, the registration or registration renewal fee for each such device is:

[(1) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle: \$12.]

[(2) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle: \$36.]

[(3) Liquid bulk measuring device with a maximum flow rate greater than 20 gallons per minute up to 100 gallons per minute: \$75.]

[(4) Liquid bulk measuring device with a maximum flow rate greater than 100 gallons per minute: \$250.]

(1) [(5)] LPG meter: \$65.

(2) [(6)] Scale with a capacity up to and including 2,000 pounds: \$35.

(3) [(7)] Ranch Scales: \$32.

(4) [(8)] Non-Ranch, Non-Truck, and Non-Livestock Scales with a capacity greater than 2,000 pounds: \$250.

(5) [(9)] Truck Scales with a capacity of 5,000 pounds or greater: \$400.

(6) [(40)] Livestock Scales with a capacity of 5,000 pounds or greater: \$350.

(b) Consumer Information Sticker: the fee for a page containing eight consumer information stickers is: \$8.

§12.13. *Devices Subject to Registration and Inspection; Exemptions.*

(a) The following devices are subject to the registration requirements of §13.1011 of the Code; as authorized by §13.029 of the Code:

[(1) motor fuel dispensers;]

[(2) kerosene dispensers;]

(1) [(3)] LPG meters; and

(2) [(4)] scales.

(b) The following devices are subject to the inspection requirements of §13.101(a) of the Code; as authorized by §13.029 of the Code.

[(1) motor fuel dispensers;]

[(2) kerosene dispensers;]

(1) [(3)] LPG meters; and

(2) [(4)] scales other than hopper scales, except as provided by §12.14 of this chapter (related to Inspection and Testing Requirements for Hopper Scales).

[(e) The following devices and motor fuel metering devices, are subject to the registration and inspection requirements of §§13.1015 - 13.1017 of the Code:]

[(1) all motor fuel metering device blends shall be inspected, tested, and calibrated by a Licensed Service Company at least once every two years; and]

[(2) only the motor fuel metering device and blends indicated in a complaint shall be inspected, tested and calibrated by a Licensed Service Company at a facility once the department has received three complaints at a facility within a twelve month period or a complaint is received on a facility that has not had a complete calibration of all meters and blends within the past 18 months.]

(c) [(d)] Pursuant to §13.029 of the Code, the following devices are exempt from registration and inspection requirements set forth in §13.1001 and §13.1011 of the Code:

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

§12.15. *Records.*

[(a)] Records or other documents related to the inspection, testing and calibration of [motor fuel] metering devices must be maintained in accordance with Chapter 13 of the Code, and shall be submitted to the Department in the manner and time period as specified in a notice provided by a Representative of the Commissioner.

[(b) All records related to the inspection, testing and calibration of motor fuel metering devices shall be maintained for a period of two years by the registrant and Licensed Service Company and are subject to inspection by the Department upon request.]

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 July 6, 2020.

TRD-202002765

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 936-9360



SUBCHAPTER E. SERVICE COMPANIES

4 TAC §12.40

The rules are proposed under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the proposal are those set forth in Texas Agriculture Code, Chapter 13. No other statutes, articles, or codes are affected by the proposed rules.

§12.40. *License Requirements.*

(a) (No change.)

(b) The department may issue a license to a person who:

(1) has available annually certified test standards meeting the specifications in NIST Handbook 105, for each class of license as follows:

(A) - (D) (No change.)

[(E) Class 5. Liquid measuring devices; maximum flow rate 20 gallons per minute or less: One five-gallon test measure.]

[(F) Class 6. Liquid measuring devices; maximum flow rate more than 20 gallons per minute: One test measure whose capacity exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate.]

(E) [(G)] Class 7. Liquefied petroleum gas (LPG) measuring devices: LPG prover.

(2) (No change.)

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

Filed with the Office of the Secretary of State on July 6, 2020.

TRD-202002766

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 936-9360



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.6

The Texas Historical Commission (Commission) proposes amendments to §21.6, related to Recorded Texas Historic Landmarks (RTHL) designation. These amendments add detailed language to define conditions of and which buildings, structures, or objects on a property apply to the Recorded Texas Historic Landmarks (RTHL) designation. The amendments also define when a RTHL designation is recorded and becomes effective.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

PUBLIC BENEFIT. Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources.

The amendments will also provide greater clarity regarding the standards for RTHL designation.

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

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

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

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; and Texas Government Code §442.006(d), which establishes Recorded Texas Historic Landmark designation requirements.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles, or codes are affected by these amendments.

§21.6. Recorded Texas Historic Landmark Designation.

(a) Buildings, structures, and objects as defined in Chapter 26 of this title (relating to Practice and Procedure) may be designated as Recorded Texas Historic Landmarks [The commission may award the Recorded Texas Historic Landmark] (hereafter referred to as "RTHL"),² provided the following conditions are met: [designation to historic structures that meet criteria set forth in program guidelines, criteria and procedures adopted by the commission.]

(1) The property is associated with events that have made a significant contribution to the broad patterns of our history or that are associated with the lives of persons significant in our past;

(2) The property embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(3) The property retains integrity at the time of the nomination, as determined by the executive director of the commission;

(4) The property, including the buildings, structures, and objects subject to the designation per subsection (b) of this section, is at least 50 years of age; and

(5) The owner(s) of the property at the time of nomination consents to this designation, which runs with the land and remains in effect under all future owners.

(b) At the choice of the legal owner(s) at the time of nomination, designation either applies to all buildings, structures, and objects, and their setting within the legal description of the property; or applies only to the specific buildings, structures, or objects that are the subject of the nomination and does not affect any other buildings, structures, or objects within the legal description of the property. Prior to designation, commission staff will evaluate whether each nominated building, structure, and object meets the criteria for designation and may recommend changes, subject to owner approval. [The RTHL designation becomes effective upon approval by the commission.]

(c) Evidence of RTHL designation shall be recorded by the commission in the deed records for the county where the RTHL property is located. Designation becomes effective upon recording. RTHL designated prior to 2020 remain valid based on approval by the commission; however, if the designation is not recorded, Texas Government Code, §442.016 shall not apply. [Official Texas Historical Markers signify the RTHL designation; designation comes only through application to and approval by the commission.]

(d) RTHL designation shall be indicated on the Official Texas Historical Marker installed at the site after the designation has been approved by the commission and recorded. However, RTHL designation shall be effective until removed by the commission, whether or not the marker remains in place. [Once designated, properties are subject to provisions of the Texas Government Code, §442.006(f) and rules of the commission, including §21.11 of this title (relating to Review of Work on Recorded Texas Historic Landmarks).]

(e) Once designated, RTHL properties are subject to provisions of the Texas Government Code, §§442.006(f), 442.011, and 442.016; rules of the commission, including §21.11 of this title (relating to Review of Work on Recorded Texas Historic Landmarks); and other applicable administrative rules.

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

Filed with the Office of the Secretary of State on June 30, 2020.

TRD-202002688

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: August 16, 2020

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



CHAPTER 22. CEMETERIES

13 TAC §22.4

The Texas Historical Commission (Commission) proposes amendments to §22.4, related to Cemeteries. These amendments remove duplicative language regarding how the Commission assesses verification of the existence of a cemetery.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

PUBLIC BENEFIT. Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources. The amendments will also provide greater clarity regarding verification of the existence of cemeteries.

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

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

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

effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.017(d), which allows for the adoption of rules necessary to identify and preserve abandoned cemeteries.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles, or codes are affected by these amendments.

§22.4. *Unknown, Abandoned, and Unverified Cemeteries*

(a) Discovery of Unknown or Abandoned Cemeteries. §711.010 of the Health and Safety Code requires that a person who discovers an unknown or abandoned cemetery shall file notice of the discovery of the cemetery with the county clerk of the county in which the cemetery is located and concurrently mail notice to the landowner on record in the county appraisal district not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(1) The Commission may provide assistance to any party required to file this notice.

(2) The Notice of Existence of Cemetery form available on the Commission's website may be used to file this notice.

(3) The county clerk must provide a copy of the notice to the Commission within 15 days after the filing of the notice with the clerk, by mailing it to the following address: Cemetery Preservation Coordinator, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276.

(b) If one or more graves are discovered during construction of improvements on a property, construction must stop and may only proceed in a manner that would not further disturb the grave or graves unless the graves are removed in accordance with §711.0105 of the Health and Safety Code.

(c) Agricultural (including ranching), construction, utility lines, industrial, and mining operations may not be conducted in a manner that will disturb a grave or cemetery unless the graves and dedication of the cemetery are removed in accordance with §711.035 of the Health and Safety Code.

(d) Discovery of Unverified Cemeteries. Section 711.0111 of the Health and Safety Code of Texas requires that any person that discovers an unverified cemetery shall file a notice and evidence of the discovery with the commission on a form provided by the commission. Section 711.0111 also requires that any person that discovers an unverified cemetery shall concurrently provide a copy of the notice of the filing with the landowner on record in the county appraisal district on whose land the unverified cemetery is located. The commission shall

evaluate the notice and the evidence submitted with the notice, and consider the response of the landowner, if any is received not later than the 30th day after notice, and shall determine whether there is sufficient evidence to support the claim of the existence of a cemetery. If the commission determines that sufficient evidence supports the existence of a cemetery, the commission shall notify the landowner and may file notice of the existence of the cemetery under §711.011 of the Health and Safety Code. If a notice of existence has already been filed under §711.011 and the commission has determined that there is not sufficient evidence of a cemetery the commission shall notify the landowner of its determination, amend the notice to include the commission's determination, and file the amendment with the county clerk to correct the dedication.

(1) The Commission may provide assistance to a person required to file this notice.

(2) The Notice of Unverified Cemetery form, which is available on the Commission's website, shall be used to file this notice.

(3) The Texas Historical Commission, with consent of the landowner, may investigate a suspected but unverified cemetery or may delegate the investigation to a qualified person described by Section 711.0105(a).

(e) The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery:

(1) the location contains interment(s) that is/are confirmed through assessments or investigations consented by the landowner and performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas;

(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;

(3) the location contains articulated human remains that were deliberately interred; or

(4) the location contains a burial pit or burial pit features.

~~{(f) The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery: }~~

~~{(1) the location contains interments that are confirmed through assessments or investigations performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas }~~

~~{(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;}~~

~~{(3) the location contains articulated human remains that were deliberately interred}~~

~~{(4) the location contains a burial pit or burial pit features}~~

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 June 30, 2020.
TRD-202002689

Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: August 16, 2020
For further information, please call: (512) 463-6100

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

**PART 30. TEXAS STATE BOARD
OF EXAMINERS OF PROFESSIONAL
COUNSELORS**

**CHAPTER 681. PROFESSIONAL
COUNSELORS**

**SUBCHAPTER A. GENERAL PROVISIONS
[THE BOARD]**

22 TAC §§681.2, 681.4, 681.5, 681.9, 681.11

The Texas Behavioral Health Executive Council proposes amended §§681.2, 681.4, 681.5, 681.9, and 681.11, relating to General Provisions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules are the definitions for the rules in Chapter 681 and pertain to the general operations for the Texas State Board of Examiners of Professional Counselors; the rules also incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable im-

plications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.2. *Definitions.*

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

(1) Accredited school--An institution of higher education accredited by a regional [regionally] accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education [Texas Higher Education Coordinating Board].

(2) Act--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

~~(3) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.]~~

(3) [(4)] Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(4) [(5)] Board--The Texas State Board of Examiners of Professional Counselors.

(5) [(6)] Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

~~(7) Commission--Health and Human Services Commission.]~~

(6) [(8)] Consent for services--Process for receiving permission from the legally authorized person who agrees to services.

(7) [(9)] Consent Form--A document executed [signed] by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the license by the Council [board]; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the Council [board] for the purpose of reporting violations of the Act or this chapter.

(8) Council--The Texas Behavioral Health Executive Council.

(9) [(10)] Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(10) Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.

(11) Direct client contact--Time spent counseling clients.

(12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(13) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(14) Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam. An online exam based upon the statutes and rules relating to the practice of counseling.

(15) License--An LPC license, LPC license with art therapy specialty designation, [provisional license,] or LPC Associate [Intern] license issued by the Council [board].

(16) Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, [provisional license,] or LPC Associate [Intern] license.

(17) LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.

(18) LPC Associate [Intern]--Licensed Professional Counselor Associate [Intern]. A person who holds an LPC Associate [Intern] license to practice counseling only under a Council-approved [board-approved] supervisor and not as an independent practitioner.

~~[(19) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:~~

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.]

(19) [(20)] Supervisor--An LPC approved by the Council [board] as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Associate [Intern].

§681.4. *Transaction of Official Business.*

[(a)] The board will transact official business only when in a legally constituted meeting with a quorum present. [A quorum necessary to conduct official business is a majority of the members.]

[(b)] The board will not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board or in accordance with board rules in this chapter. Board or staff member opinions about ethical dilemmas or practice issues can never be substituted for appropriate professional consultation or legal advice.]

[(c)] Robert's Rules of Order Revised will be the basis of parliamentary decisions except as otherwise provided in this chapter.]

§681.5. *Agendas.*

(a) Prior to each meeting the executive director or designee will prepare and submit an agenda to each member of the board which

includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chair.

(b) The official agenda of a meeting will be filed with the Texas Secretary of State as required by law.

§681.9. *Committees.*

(a) The board or the chair may establish committees deemed necessary to fulfill board responsibilities.

(b) The chair may appoint members of the board to serve on committees and will designate a chair for each committee.

(c) Only members of the board may be appointed to a board committee.

(d) Committee chairs will preside at all committee meetings and will make regular reports to the board.

(e) Committees may direct all reports or other materials to the executive director or designee for distribution.

(f) Committees will meet when called by the committee chair or when so directed by the board.

(g) Each committee will consist of at least one public member and one professional member, unless the board chair or vice chair authorizes otherwise.

§681.11. *Reimbursement for Expenses.*

A board member is entitled to receive travel reimbursement [per diem and transportation expenses] as provided by the Texas General Appropriations Act.

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 July 2, 2020.

TRD-202002718

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



22 TAC §§681.10, 681.12 - 681.17

The Texas Behavioral Health Executive Council proposes the repeal of §§681.10 and 681.12 - 681.17, relating to the Board. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found

in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency;

it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.10. *Executive Director.*

§681.12. *Official Records of the Board.*

§681.13. *Impartiality and Non-discrimination.*

§681.14. *Fees.*

§681.15. *Processing Procedures.*

§681.16. *Petition for the Adoption of a Rule.*

§681.17. *Request for Criminal History Evaluation Letter.*

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 July 2, 2020.

TRD-202002704

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

22 TAC §681.31

The Texas Behavioral Health Executive Council proposes the repeal of §681.31, relating to Counseling Methods and Practices. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a

result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.31. *Counseling Methods and Practices.*

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 July 2, 2020.

TRD-202002705

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



22 TAC §§681.31, 681.41 - 681.47, 681.49 - 681.53

The Texas Behavioral Health Executive Council proposes new §§681.31, 681.41 - 681.47, and 681.49 - 681.53, relating to Rules of Practice.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of

the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the scope of practice, standards of care, and ethical practice for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code

which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.31. Counseling Methods and Practices.

The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods, techniques and modalities may include, but are not restricted to, the following:

(1) individual counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, career, and spiritual development and adjustment through the life span;

(2) group counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the life span;

(3) marriage/couples counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples;

(4) family counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, social, educational, spiritual, and career development and adjustment through the life span;

(5) addictions counseling which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

(6) rehabilitation counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(7) education counseling, which uses formal and informal counseling methods and assessments and appraisal instruments for the purpose of determining strength, weakness, mental condition, emotional stability, intellectual ability, interest, skill, aptitude, achievement, and other personal characteristics of individuals for the selection of and placement in educational settings, preschool through postdoctoral study;

(8) career development counseling, which uses formal and informal counseling methods and appraisal instruments for the purpose of determining intellectual ability, interest, skill, aptitude, achievement, mental condition, emotional fitness, and other personal characteristics for occupational, vocational, and career selection and placement throughout the life span;

(9) sexual issues counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(10) referral counseling, which uses the processes of evaluating and identifying needs of clients to determine the advisability of referral to other specialists, informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources;

(11) psychotherapy, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and/or strategies to assist clients in their efforts to recover from mental or emotional issues;

(12) play therapy, which uses play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors and feelings as a part of the therapist's role in helping children overcome their social, emotional, and behavioral issues;

(13) hypnotherapy, which uses the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional issues and addictions;

(14) expressive modalities used in the treatment of interpersonal, emotional or mental health issues, chemical dependency, or human developmental issues. Modalities include, but are not limited to, music, art, dance movement, or the use of techniques employing animals in providing treatment;

(15) biofeedback, which uses electronic equipment to monitor and provide feedback regarding an individual's physiological responses. The counselor who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the counselor's academic program or the substantial equivalent provided through approved continuing education;

(16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which uses formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental status, emotional stability, intellectual ability, interests, aptitudes, achievement level and other characteristics for diagnosing mental health disorders; but does not permit the diagnosis of a physical condition or physical disorder;

(17) consulting, which uses the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations but not considered direct client contact for LPC Associates; and

(18) crisis counseling, which focuses on short term counseling interventions to address immediate situations including factors such as safety and immediate needs.

§681.41. General Ethical Requirements.

(a) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or

(3) the practice or field of counseling.

(b) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.

(d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:

(1) fees and arrangements for payment;

(2) counseling purposes, goals, and techniques;

(3) any restrictions placed on the license by the Council;

(4) the limits on confidentiality;

(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and

(6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;

(7) the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and

(8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) A licensee must inform the client in writing of any changes to the items in subsection (e) of this section, prior to initiating the change.

(g) Technological means of communication may be used to facilitate the therapeutic counseling process.

(h) In accordance with §503.401(a)(4) of the Act, a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.

(i) A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, will not be considered as a violation of state law relating to illegal remuneration.

(j) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.

(k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.

(l) A licensee must set and maintain professional boundaries.

(m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(5) The licensee must not provide counseling services to previous or current:

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(6) The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money

or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.

(7) The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(n) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(o) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client.

(p) The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

- (1) within a group; or
- (2) individual counseling.

(q) For each client, a licensee must keep accurate records of:

(1) signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order;

- (2) intake assessment;
- (3) dates of counseling treatment intervention;
- (4) principal treatment methods;
- (5) progress notes;
- (6) treatment plan; and
- (7) billing information.

(r) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.

(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.

(t) Billing Requirements.

(1) A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.

(3) Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment

intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) A licensee may not knowingly overcharge a client.

(5) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.

(u) A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.

(v) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

(w) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.

(x) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.

(z) A licensee must not knowingly overtreat a client.

(aa) A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

(bb) A licensee must report to the Council knowledge of any unlicensed practice of counseling.

(cc) A licensee or an applicant must not participate in the falsification of any materials submitted to the Council.

(dd) A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs or alcohol.

§681.42. Sexual Misconduct.

(a) For the purpose of this section, the following terms have the following meanings.

(1) "Mental health provider" means a licensee or any other licensed mental health professional, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy. Mental health provider also includes employees of these individuals or employees of a treatment facility.

(2) Sexual contact means:

(A) deviate sexual intercourse as defined by the Texas Penal Code, §21.01;

(B) sexual contact as defined by the Texas Penal Code, §21.01;

(C) sexual intercourse as defined by the Texas Penal Code, §21.01; or

(D) requests or offers by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, including sexual contact, that can reasonably be construed as being for the purposes of sexual arousal gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or relationship dysfunction.

(4) "Therapeutic deception" means a representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's counseling.

(b) A licensee must not engage in sexual contact with or sexual exploitation of a person who is:

(1) a client;

(2) an LPC Associate supervised by the licensee; or

(3) a student of a licensee at an educational institution at which the licensee provides professional or educational services.

(4) Sexual contact that occurs more than five years after the termination of the client relationship, cessation of supervision of an LPC Associate, or termination of professional or educational services provided to a student of the licensee at a post-secondary educational institution will not be deemed a violation of this section, if the conduct is consensual, not the result of sexual exploitation, and not detrimental to the client. The licensee must demonstrate there has been no exploitation in light of all relevant factors, including, but not limited to:

(A) the amount of time that has passed since therapy terminated;

(B) the nature and duration of the therapy;

(C) the circumstances of termination;

(D) the client's, LPC Associate's, or student's personal history;

(E) the client's, LPC Associate's, or student's current mental status;

(F) the likelihood of adverse impact on the client, LPC Associate, or student and others; and

(G) any statements or actions made by the licensee during the course of therapy, supervision, or educational services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client, LPC Associate, or student.

(c) A licensee must not practice therapeutic deception of a client.

(d) It is not a defense under subsections (b) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the client, LPC Associate, or student occurred:

(1) with the consent of the client, LPC Associate, or student;

(2) outside the professional counseling sessions of the client or student; or

(3) off the premises regularly used by the licensee for the professional, supervisory, or educational services provided to the client, LPC Associate, or student.

(e) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person:

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, and:

(A) is offensive or creates a hostile environment, and the licensee knows, should know, or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as seductive or sexual;

(3) sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling;

(9) making a request for a date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;

(11) any bodily exposure of genitals, anus or breasts;

(12) encouraging another to masturbate in the presence of the licensee; or

(13) masturbation by the licensee when another is present.

(f) A licensee must report sexual misconduct as follows:

(1) If a licensee has reasonable cause to suspect a client, LPC Associate, or student has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client, LPC Associate, or student alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee must report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:

(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(B) the Council and any other state licensing agency which licenses the mental health provider if the conduct involves a licensed individual.

(2) Before making a report under this subsection, the reporter must inform the alleged victim of the reporter's duty to report and must determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection must:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

§681.43. Testing.

(a) Prior to or following the administration of any test, a licensee must make known to clients the purposes and explicit use to be made of the test as a part of a professional counseling relationship.

(b) A licensee must not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.

(c) A licensee must not administer any test without the appropriate training and experience to administer and interpret the test.

(d) A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.

(e) In accordance with the §503.003(b)(1) of the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.

§681.44. Drug and Alcohol Use.

A licensee must not use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling.

§681.45. Confidentiality and Required Reporting.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code Chapter 611 and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee must not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code Chapter 611 or other state or federal statutes or rules.

(c) A licensee must comply with Texas Health and Safety Code, Chapters 181 and 611, concerning access to mental health records and confidential information.

(d) A licensee must report information as required by §882.36 (relating to Compliance with State and Federal Law) and §884.32 (relating to Reportable Legal Action and Discipline) of this title and the following statutes:

(1) Texas Family Code Chapter 261, Subchapter B, concerning report of abuse or neglect of minors;

(2) Texas Human Resources Code Chapter 48, Subchapter B, concerning reports of abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code Chapter 161, Subchapter L, concerning abuse, neglect, and unprofessional or unethical conduct in health care facilities; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning duty to report sexual exploitation by a mental health provider.

(5) A licensee must comply with Texas Occupations Code §109.051, relating to the release of treatment information concerning the treatment of a sex offender.

§681.46. Licensees and the Council.

(a) Licensees are bound by the provisions of the Act and this chapter as well as the Council's rules and statutes.

(b) A licensee has the responsibility of reporting alleged violations of the Act or this chapter to the Council.

§681.47. Assumed Names.

(a) An individual practice by a licensee may be established as a corporation, a limited liability partnership, a limited liability company, or other business entity in accordance with state or federal law.

(b) An assumed or trade name used by a licensee must not be false, deceptive, or misleading as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements).

§681.49. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement must not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any misrepresentation of fact or omits a fact necessary to make the statement misleading;

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

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

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

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

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

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

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

(c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations.

(d) The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if the degree would be accepted as a transfer degree by an accredited school.

(e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.

(f) The Council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.

(g) All advertisements or announcements of counseling including telephone directory listings by a person licensed by the Council must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas Behavioral Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."

(h) An LPC Associate must indicate Associate status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Associate." On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the Associate's name must be followed by the name of the supervisor.

(i) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.

(j) A licensed professional counselor who is a Council-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

§681.50. Research and Publications.

(a) In research with a human participant, a licensee must take reasonable precautions to ensure that the participant does not suffer emotional or physical harm.

(b) A licensee must ensure the full protection of a client's identity when using data obtained from a professional counseling relationship for the purposes of education or research.

(c) When conducting or reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to the person/persons who have contributed significantly to the licensee's research or publication.

§681.51. Parenting Coordination.

(a) In accordance with Texas Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in Texas Family Code, §153.606, in a suit; and

(2) who:

(A) is appointed under Texas Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parenting coordinator has a duty to provide the following information in writing to the parties of the suit

about the responsibility of the licensee and the role of the appointed court.

(1) A licensee, who serves as a parenting coordinator, is not acting under the authority of a license issued by the Council and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the Council, but rather the jurisdiction of the appointing court.

(2) Records of a licensee serving as a parenting coordinator are confidential under Texas Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator must comply with the Texas Civil Practice and Remedies Code, Chapter 154,

(3) A licensee must not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§681.52. Parenting Facilitation.

(a) In accordance with Texas House Bill 1012, 81st Legislature, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by Texas Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Texas Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators must comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with Texas Family Code, §153.6101(b)(1), a licensed professional counselor associate must not serve as a parenting facilitator.

(f) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in Texas Family Code, Chapter 153.

(g) A licensee serving as a parent facilitator must assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function--The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function--A parenting facilitator must review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function--A parenting facilitator must educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function--A parenting facilitator must work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee, serving as a parenting facilitator, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used so as to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parent facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator must not provide legal advice.

(m) A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator must not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator must maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) must not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) must not coerce or improperly influence any party to make a decision;

(4) must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) must not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must be given or received by a licensee for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator must communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator must, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process must not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.

(w) In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;

(2) must report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) must maintain records necessary to support charges for services and expenses and must make a detailed accounting of those charges to the parties and their counsel if requested to do so;

(4) must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) must maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records must be maintained for the period of time described in §681.41(r) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the Council.

(aa) Charges for parenting facilitation services must be based upon the actual time expended by the parenting facilitator or as directed by the written agreement of the parties and/or formal order of the court.

(bb) All fees and costs must be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parent facilitator that is required by Texas Family Code, §153.6101(b)(2) is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and Council rules governing parent coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parent facilitator must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of

training to meet the requirements of subsection (ee) of this section, is based on functional skills taught during the training rather than the use of specific titles or names.

§681.53. Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(a) Licensees must comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(b) A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with qualifications stipulated in Texas Family Code, Chapter 107.

(c) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation, see Council §884.3.

(d) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the Council.

(e) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable Council rules regardless of whether the licensee is acting as a factual witness or an expert.

(f) A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.

(g) Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Subchapter D, Chapter 107.

(h) Licensees providing child custody evaluations or adoption evaluations must, prior to beginning the evaluation, in writing inform the parties of:

(1) the limitations on confidentiality in the evaluation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancelation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(i) A Licensed Professional Counselor Associate (LPC Associate) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.

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 July 2, 2020.

TRD-202002722

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: August 16, 2020
For further information, please call: (512) 305-7706



SUBCHAPTER C. CODE OF ETHICS

22 TAC §§681.41 - 681.51

The Texas Behavioral Health Executive Council proposes the repeal of §§681.41 - 681.51, relating to Code of Ethics. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by

§503.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.41. *General Ethical Requirements.*

§681.42. *Sexual Misconduct.*

§681.43. *Testing.*

§681.44. *Drug and Alcohol Use.*

§681.45. *Confidentiality and Required Reporting.*

§681.46. *Licensees and the Board.*

§681.47. *Assumed Names.*

§681.48. *Consumer Information.*

§681.49. *Advertising and Announcements.*

§681.50. *Research and Publications.*

§681.51. *Finding of Misconduct Occurring before Licensure.*

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 July 2, 2020.

TRD-202002706

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, 681.147, 681.164

The Texas Behavioral Health Executive Council proposes new §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101,

681.114, 681.141 - 681.143, 681.145, 681.147, and 681.164, relating to Application and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §503.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.71. General Application Procedures.

(a) An applicant must submit for review an official complete application with all supporting documentation, all applicable fees, and information required by law to the Council. Complete applications will consist of the required application materials described in Council rules §882.1 (relating to Application Process), 882.2 (relating to General Application File Requirements), and §681.72 of this title (relating to Required Application Materials).

(b) To upgrade from LPC Associate status to LPC, an LPC Associate must submit the supervised experience documentation form, proof of passing the jurisprudence exam within six months prior to upgrade, and the applicable fee.

§681.72. Required Application Materials.

(a) To apply for LPC Associate, the applicant must submit:

(1) the Council's application form;

(2) all applicable fees;

(3) official examination results from the National Board of Certified Counselors verifying a passing score on the National Coun-

selor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE) issued no more than five (5) years before the date the application was received;

(4) completion certificate for the Texas jurisprudence exam dated no more than six months before the date the application was received;

(5) an official graduate transcript(s);

(6) a practicum/graduate intern documentation form;

(7) a supervisory agreement form; and

(8) The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Associate license must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the Council may consider a supervised experience documentation form with verification of the supervisor's credentials.

(b) To apply for LPC as the holder of a current Texas LPC Associate license, the applicant must submit:

(1) the Council's application form;

(2) all applicable fees;

(3) completion certificate for the jurisprudence exam dated no more than six months before the date the application for LPC was received;

(4) the Council's supervised experience documentation form; and

(5) other information or forms as requested by the Council.

(c) To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:

(1) all of the items listed in subsection (a)(1) - (5) of this section;

(2) official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and

(3) other information or forms as requested by the Council.

(4) The five-year expiration of the NCE or NCMHCE score does not apply to an applicant who has held a license issued by a United States jurisdiction in good standing for at least two (2) years before the date the application for LPC was received.

(d) To apply for supervisor status, an LPC must:

(1) have held the LPC license in good standing for at least 60 months;

(2) submit an application and all applicable fees; and

(3) submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:

(A) a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received; or

(B) a 40-clock-hour supervision course as set forth in §681.147 of this title (relating to 40-Clock-Hour Supervisor Training

Course); the qualifying 40-clock-hour supervision course may have been completed no more than two (2) years before the date the application for supervisor status was received.

(e) An applicant who holds a current LPC license in good standing issued by another jurisdiction must be substantially equivalent to Texas licensure requirements.

(f) Licensure requirements that either match or exceed Texas requirements are considered to be substantially equivalent.

§681.73. Application for Art Therapy Specialty Designation.

(a) A person applying for licensure with an art therapy specialty designation must:

(1) meet the requirements for an LPC license set out in this chapter;

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or

(B) all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy;

(iii) 700 hours of supervised practicum from an accredited school;

(3) have the experience requirements set out in subsection (c) of this section; and

(4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of §§681.91 - 681.93 of this chapter and must have the following:

(1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(2) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in counseling or a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

§681.81. General Academic Requirements.

(a) The Council will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title (relating to Academic Requirements) and §681.83 of this title (relating to Academic Course Content).

(b) Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school. The applicant must provide the Council with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. In order to meet this requirement the applicant must comply with Council rule, §882.11 of this title (relating to Applicants with Foreign Degrees).

(c) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.

(d) The Council will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.

(e) The Council will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.

(f) In evaluating transcripts, the Council will consider a quarter hour of academic credit as two-thirds of a semester hour.

§681.82. Academic Requirements.

(a) Persons applying for licensure must have a graduate degree in counseling or a counseling-related field of:

(1) at least 48 semester hours of coursework in a counseling-related field for applicants who began the qualifying program before August 1, 2017; and

(2) at least 60 semester hours of coursework in a counseling-related field for applicants who began the qualifying program on or after August 1, 2017.

(b) An applicant who holds a graduate degree in a counseling-related field must have an official transcript documenting satisfaction of the requirements described in §681.83 of this title (relating to Academic Course Content).

(c) An applicant who has held a full LPC in good standing issued by a United States jurisdiction for at least two (2) years immediately preceding the date the application was received is deemed to have met all academic requirements, including the practicum.

(d) The 48/60 semester hours must be designed to train a person to provide direct services to assist clients in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. The 48/60 semester hours may be course work that was part of the graduate degree in a counseling-related field, may be in addition to course work taken for the qualifying program, or a combination of both.

§681.83. Academic Course Content.

(a) An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.

(b) An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and

(10) practicum (internship) - supervised practicum experience primarily counseling in nature which includes:

(A) At least 300 clock-hours, of which at least 100 hours must be direct client counseling.

(B) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(c) The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional counseling skills and must be courses related primarily to professional counseling.

(d) As of August 1, 2017, the following courses must be taken in addition to those outlined in subsection (b) of this section to meet the 60 semester hour requirement:

(1) addictions counseling; to include, but not be limited to, gambling, sexual, eating, alcohol, or drug;

(2) an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current Council rules;

(3) couples, marriage, or family counseling; and

(4) a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.

§681.91. LPC Associate License.

(a) The Council may issue an LPC Associate license to an applicant who has:

- (1) filed all application forms and paid all applicable fees;
- (2) met all of the academic requirements for licensure;
- (3) completed the required examinations with the requisite score as described in §681.72(a)(3) and (a)(4) of this title (relating to Required Application Materials);
- (4) entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and
- (5) not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)).

(b) An LPC Associate must comply with all provisions of the Act and Council rules.

(c) To practice counseling in Texas, a person must obtain an LPC Associate license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting will not count toward the supervised experience requirements.

(d) An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate may not own an independent professional counseling practice.

(e) An LPC Associate may have no more than two (2) Council-approved LPC supervisors at any given time.

(f) An LPC Associate must maintain their LPC Associate license during his or her supervised experience.

(g) An LPC Associate license will expire 60 months from the date of issuance.

(h) An LPC Associate who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.

(i) An LPC Associate must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Associate receives his or her LPC license. Supervision is complete upon the LPC Associate receiving the LPC license.

(j) An LPC Associate does not own client records; they are the property of the agency, organization, or LPC-S.

(k) An LPC Associate must not employ a supervisor but may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(l) An LPC Associate must not accept direct payment for services from a client.

(m) All billing documents for services provided by an LPC Associate must reflect the LPC Associate holds an LPC Associate license and is under supervision.

(n) The LPC Associate must not represent himself or herself as an independent practitioner. The LPC Associate's name must be followed by the name of the supervisor on all advertisements, billings, and announcements, including but not limited to websites and intake documents.

§681.93. Supervisor Requirements.

(a) A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.

- (1) The supervisory written record must contain:

(A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;

(B) a copy of the LPC Associate's wall certificate noting the dates of issuance and expiration;

(C) fees and record of payment;

(D) the date of each supervisory session;

(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; and

(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section.

(2) The supervisor must provide a copy of all records to the LPC Associate upon request.

(b) The full professional responsibility for the counseling activities of the LPC Associate rests with the LPC Associate's approved supervisor(s). If the LPC Associate receives disciplinary action by the Council, the supervisor may also be subject to disciplinary action.

(1) Supervisors must review all provisions of the Act and Council rules in this chapter during supervision.

(2) The supervisor must ensure the LPC Associate is aware of and adheres to all provisions of the Act and Council rules.

(c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

(1) The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.

(2) The supervisor may not be an employee of his or her LPC Associate.

(d) The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.

(e) If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.

(f) The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:

(1) after the LPC Associate license was issued; and

(2) in not less than 18 months of supervised counseling experience.

(g) A supervisor whose license has expired is no longer an approved supervisor and:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the expiration of the supervisor status.

(3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(h) Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

(3) hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(i) Supervision of an LPC Associate without having Council approved supervisor status is grounds for disciplinary action.

§681.101. Examinations.

(a) Each applicant for licensure is required to take and pass the National Counselor Exam or the National Clinical Mental Health Counselor Exam and complete the jurisprudence exam prior to application.

(b) The development or administration of the examination may be contracted to a national testing company.

(c) The National Counselor Examination and the National Clinical Mental Health Counselor Exam are administered at testing centers located in various cities throughout the state. The jurisprudence exam is available online at the Council's website.

§681.114. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant applying for licensure under this section must comply with Council rule, §882.60 of this title (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.

(c) For an application submitted by a verified military service member or military veteran, the applicant must receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that the Council determines is relevant to the licensing requirements, unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

§681.141. General Continuing Education Requirements.

(a) The purpose of Council rules §§681.141 - 681.147 is to establish the continuing education requirements for the renewal of an LPC license. These requirements are intended to maintain and improve the quality of professional counseling services provided to the public and maintain licensee knowledge of current research, techniques, and practice; and provide resources which will improve skill and competence in professional counseling.

(b) A licensee must complete 24 clock-hours of continuing education acceptable to the Council during each 24-month period. A clock-hour is 60 minutes of attendance and participation in an acceptable continuing education experience. A licensee must complete at least four hours of continuing education in ethics, two of which must be directly related to Texas LPC ethics, each renewal period. Completion of the jurisprudence examination will count as one hour of continuing education in Texas LPC ethics.

(c) A licensee holding the supervisor status must complete 6 additional hours of continuing education in supervision every 2 years.

§681.142. Acceptable Continuing Education.

The continuing education must be related to counseling.

(1) The licensee must ensure the education provided is related to the practice of professional counseling.

(2) The licensee must ensure the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented.

(3) The presenter must verify attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned.

(4) The presenter must provide participants a mechanism for evaluation of each continuing education activity.

§681.143. Activities Unacceptable as Continuing Education.

The Council will not give continuing education credit to a licensee for:

(1) education incidental to the regular professional activities of a counselor such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities not related to the practice of professional counseling that are required as a part of one's job;

(4) teaching or consultation that is part of one's employment; and

(5) an experience that does not fit the types of acceptable continuing education in §681.141 of this title (relating to Acceptable Continuing Education).

§681.145. Determination of Clock-hour Credits.

(a) Programs which meet the criteria of §681.142 of this title (relating to Acceptable Continuing Education) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(b) Teaching in programs not part of the licensee's employment which meet the Council's criteria as set out in §681.142 of this title will be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two-year period.

(c) Completion of academic work with a passing grade in subject areas supporting the development of skills and competence in professional counseling at an accredited school will be credited on the basis of 15 clock-hours of credit for each semester hour or 10 clock-hours of credit for each quarter hour completed.

§681.147. 40-Clock-Hour Supervisor Training Course.

The 40-clock-hour supervision training must comply with §681.142 of this title (relating to Acceptable Continuing Education) and:

(1) the course must be taught by a full LPC with supervisor status;

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-clock-hour supervision training must include at least:

(A) three (3) clock-hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) clock-hours for supervisory relationship and counselor development;

(C) twelve (12) clock-hours for supervision methods and techniques, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) clock-hours covering roles for supervision and standards of practice; Subchapter B (relating to Rules of Practice); Subchapter C (relating to Application and Licensing); §681.91 of this title (relating to LPC Associate License); §681.92 of this title (relating to Experience Requirements); §681.93 of this title (relating to Supervisor Requirements); other codes of ethics; and legal and professional issues; and

(E) three (3) clock-hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

§681.164. Licensing of Persons with Criminal Convictions.

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) the misdemeanor of knowingly or intentionally practicing counseling without a license;

(2) failing to report child abuse or neglect;

(3) a criminal act involving deceptive business practices;

(4) the offense of assault or sexual assault;

(5) the felony offense of fraud;

(6) offenses listed in Article 42A.054 of the Code of Criminal Procedure;

(7) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(8) any criminal violation of the Licensed Professional Counselors Act;

(9) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;

(10) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;

(11) any criminal violation of Sections 32.42 (Deceptive Business Practices), 32.43 (Commercial Bribery), 32.45 (Misapplication of Fiduciary Property), 32.46 (Securing Execution of Document by Deception), 32.50 (Deceptive Preparation and Marketing of Academic Product), 32.51 (Fraudulent Use or Possession of Identifying Information), 32.52 (Fraudulent, Substandard, or Fictitious Degree), or 32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;

(12) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;

(13) any offense involving the failure to report abuse;

(14) any criminal violation of Section 38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;

(15) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);

(16) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of counseling;

(17) any attempt, solicitation, or conspiracy to commit an offense listed herein;

(18) any criminal violation of section 22.041 (abandoning or endangering a child);

(19) any criminal violation of section 21.15 (invasive visual recording);

(20) any criminal violation of section 21.08 (indecent exposure);

(21) any criminal violation of section 22.02 (aggravated assault);

(22) any criminal violation of section 25.04 (enticing a child);

(23) any criminal violation of section 43.26 (possession of child pornography);

(24) any criminal violation of section 20.03 (kidnapping);

(25) any criminal violation of chapter 19 (criminal homicide).

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 July 2, 2020.

TRD-202002723

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§681.71 - 681.73

The Texas Behavioral Health Executive Council proposes the repeal of §§681.71 - 681.73, relating to Application Procedures. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand

an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.71. *General Application Procedures.*

§681.72. *Required Application Materials.*

§681.73. *Application for Art Therapy Specialty Designation.*

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 July 2, 2020.

TRD-202002707

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §§681.201, 681.203 - 681.205

The Texas Behavioral Health Executive Council proposes new §§681.201 and 681.203 - 681.205, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to a schedule of sanctions for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the

same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments

may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.201. Purpose of this Subchapter.

This schedule of sanctions is adopted as required by the Act §503.2015(2).

§681.203. Severity Levels for the Schedule of Sanctions.

(a) The following are the severity levels for the schedule of sanctions:

(1) Level One--revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four--probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations.

(b) Licensee who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received from a consumer.

(c) Supervisors who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received by the supervisor to his or her LPC Associate(s).

§681.204. Other Actions.

Complaints may be resolved by issuance of a warning letter or a conditional letter of agreement, which does not involve a formal disciplinary action.

(1) Warning letters inform licensees of their duties under the Act, the Council Act, or council rules, and whether the council has a concern about the circumstances surrounding the complaint.

(2) A conditional letter of agreement informs the licensee of the licensee's duties under the Act, the Council Act, or Council rules, whether the conduct or omission complained of appears to violate such duties, and creating Council ordered conditions for the long-term resolution of the issues in the complaint. This conditional letter of agreement specifies the immediate disposition of the complaint. The licensee is issued the conditional letter of agreement by staff; and a signature of agreement by the licensee is required. If the licensee fails to comply with all the Council ordered conditions in the specified time frame outlined in the conditional letter agreement, staff will open a new complaint arising out of non-compliance with the conditional letter agreement or the underlying conduct.

§681.205. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §681.205

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 July 2, 2020.

TRD-202002724

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: August 16, 2020
For further information, please call: (512) 305-7706



SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §§681.81 - 681.83

The Texas Behavioral Health Executive Council proposes the repeal of §§681.81 - 681.83, relating to Academic Requirements for Licensure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse

effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously

voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.81. *General Academic Requirements.*

§681.82. *Academic Requirements.*

§681.83. *Academic Course Content.*

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 July 2, 2020.

TRD-202002708

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §681.91, §681.93

The Texas Behavioral Health Executive Council proposes the repeal of §681.91 and §681.93, relating to Experience Requirements for Licensure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate

a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.91. *LPC Intern License.*

§681.93. *Supervisor 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 July 2, 2020.

TRD-202002709

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER G. LICENSURE EXAMINATIONS

22 TAC §§681.101 - 681.103

The Texas Behavioral Health Executive Council proposes the repeal of §§681.101 - 681.103, relating to Licensure Examinations. The proposed repeals correspond with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will

be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code

which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.101. *Examinations.*

§681.102. *Notice of Results.*

§681.103. *Reexamination.*

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 July 2, 2020.

TRD-202002710

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER H. LICENSING

22 TAC §§681.111 - 681.114

The Texas Behavioral Health Executive Council proposes the repeal of §§681.111 - 681.114, relating to Licensing. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council

to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.111. *Issuance of Licenses.*

§681.112. *Provisional Licensing.*

§681.113. *Surrender of License.*

§681.114. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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 July 2, 2020.

TRD-202002711

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §§681.121, 681.123 - 681.126

The Texas Behavioral Health Executive Council proposes the repeal of §§681.121, 681.123 - 681.126, relating to Regular License Renewal; Inactive and Retirement Status. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to

licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information

Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.121. *General Renewal Requirements.*

§681.123. *License Renewal.*

§681.124. *Late Renewal.*

§681.125. *Inactive Status.*

§681.126. *Retired Status.*

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 July 2, 2020.

TRD-202002712

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706

SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141 - 681.143, 681.145 - 681.147

The Texas Behavioral Health Executive Council proposes the repeal of §§681.141 - 681.143 and 681.145 - 681.147, relating to Continuing Education Requirements. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501 - 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small

businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code, which states the Board shall

propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.141. *General Continuing Education Requirements.*

§681.142. *Acceptable Continuing Education.*

§681.143. *Activities Unacceptable as Continuing Education.*

§681.145. *Determination of Clock-hour Credits.*

§681.146. *Reporting of Continuing Education.*

§681.147. *40-Clock-Hour Supervisor Training Course.*

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 July 2, 2020.

TRD-202002713

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §§681.161, 681.162, 681.164 - 681.172

The Texas Behavioral Health Executive Council proposes the repeal of §§681.161, 681.162, and 681.164 - 681.172, relating to Complaints and Violations. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and

507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the resi-

dents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

- §681.161. *Complaint Procedures.*
- §681.162. *Disciplinary Action; Notices.*
- §681.164. *Licensing of Persons with Criminal Convictions.*
- §681.165. *Suspension, Emergency Suspension, Revocation, or Denial.*
- §681.166. *Informal Disposition.*
- §681.167. *Waiver of Right to Hearing.*
- §681.168. *Surrender of License when Complaint is Pending.*
- §681.169. *Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.*
- §681.170. *Monitoring of Licensees.*
- §681.171. *Assessment of Administrative Penalties.*
- §681.172. *Due Process Following Violation of an Order.*

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

Filed with the Office of the Secretary of State on July 2, 2020.

TRD-202002714

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER L. FORMAL HEARINGS

22 TAC §§681.181, 681.182, 681.184

The Texas Behavioral Health Executive Council proposes the repeal of §§681.181, 681.182, and 681.184, relating to Formal Hearings. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined

that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to

prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.181. *Purpose.*

§681.182. *Formal Hearing Procedures.*

§681.184. *Action After the Hearing.*

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 July 2, 2020.

TRD-202002715

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER M. SCHEDULE OF SANCTIONS

22 TAC §§681.201 - 681.204

The Texas Behavioral Health Executive Council proposes the repeal of §§681.201 - 681.204, relating to schedule of sanctions. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse

effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously

voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.201. *Purpose of Subchapter M.*

§681.202. *Relevant Factors.*

§681.203. *Severity Levels and Sanction Guide.*

§681.204. *Other Actions.*

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 July 2, 2020.

TRD-202002716

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER N. PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS

22 TAC §§681.251 - 681.253

The Texas Behavioral Health Executive Council proposes the repeal of §§681.251 - 681.253, relating to Parenting Coordination and Facilitation and Child Custody and Adoption Evaluation. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and

507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the resi-

dents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§681.251. *Parenting Coordination.*

§681.252. *Parenting Facilitation.*

§681.253. *Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.*

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 July 2, 2020.

TRD-202002717

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§781.101, 781.102, 781.202, 781.203, 781.205 - 781.209

The Texas Behavioral Health Executive Council proposes amended §781.101 and §781.102 and new §§781.202, 781.203, and 781.205 - 781.209, relating to General Provisions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules are the definitions for the rules in Chapter 781 and pertain to the general operations for the Texas State Board of Social Worker Examiners; the rules also incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied

with Chapters 505 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they

do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has

been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.101. *Purpose and Scope.*

(a) This chapter implements the provisions in the Social Work Practice Act (Act), Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.

(b) The Act restricts the use of the titles "social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," "licensed clinical social worker" or any other title that implies licensure or certification in social work.

~~[(c) This chapter covers the organization, administration, and general procedures and policies of the Texas State Board of Social Worker Examiners.]~~

~~[(d) The Act and this chapter apply to every licensee even if the licensee is involved in activities or services exempt under the Act, §505.003.]~~

§781.102. *Definitions.*

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

(1) Accredited colleges or universities--An educational institution that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education [Council on Higher Education Accreditation].

(2) Act--The Social Work Practice Act, Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.

~~[(3) ALJ--An Administrative Law Judge within the State Office of Administrative Hearings who conducts hearings under this chapter.]~~

(3) ~~[(4)]~~ Agency--A public or private employer, contractor or business entity providing social work services.

~~[(5) AMEC--Alternative method of examining competency, as referenced in Texas Occupations Code, §505.356(3), regarding reexamination.]~~

~~[(6) APA--The Administrative Procedure Act, Government Code, Chapter 2001.]~~

(4) ~~[(7)]~~ Assessment--An ongoing process of gathering information about and reaching an understanding of the client or client group's characteristics, perceived concerns and real problems, strengths and weaknesses, and opportunities and constraints; assessment may involve administering, scoring and interpreting instruments designed to measure factors about the client or client group.

(5) ~~[(8)]~~ Association of Social Work Boards (ASWB)--The international organization which represents regulatory boards of social work and administers the national examinations utilized in the assessment for licensure.

~~(6)~~ ~~[(9)]~~ Board--Texas State Board of Social Worker Examiners.

~~(7)~~ ~~[(40)]~~ Case record--Any information related to a client and the services provided to that client, however recorded and stored.

~~(8)~~ ~~[(44)]~~ Client--An individual, family, couple, group or organization that receives social work services from a person identified as a social worker who is ~~[either]~~ licensed ~~[or unlicensed]~~ by the Council ~~[board]~~.

~~(9)~~ ~~[(42)]~~ Clinical social work--A specialty within the practice of master social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. Clinical social work practice involves using specialized clinical knowledge and advanced clinical skills to assess, diagnose, and treat mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents and children. Treatment methods may include, but are not limited to, providing individual, marital, couple, family, and group psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) codes, and other diagnostic classification systems in assessment, diagnosis, and other practice activities. The practice of clinical social work is restricted to either a Licensed Clinical Social Worker, or a Licensed Master Social Worker under clinical supervision in employment or under a clinical supervision plan.

~~[(13)]~~ ~~Commission--Health and Human Services~~ ~~Commission.]~~

~~(10)~~ ~~[(44)]~~ Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.

~~[(15)]~~ ~~Completed application.~~ ~~The official social work application form, fees and all supporting documentation which meet the criteria set out in this chapter.]~~

~~(11)~~ ~~[(46)]~~ Conditions of exchange--Setting reimbursement rates or fee structures, as well as business rules or policies involving issues such as setting and cancelling appointments, maintaining office hours, and managing insurance claims.

~~[(17)]~~ ~~Contested case~~ ~~-A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the board determines the party's legal rights, duties, or privileges after the party has an opportunity for a hearing.]~~

~~(12)~~ ~~[(48)]~~ Counseling, clinical--The use of clinical social work to assist individuals, couples, families or groups in learning to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

~~(13)~~ ~~[(49)]~~ Counseling, supportive--The methods used to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support.

~~(14)~~ ~~Council--The Texas Behavioral Health Executive Council.~~

~~(15)~~ ~~[(20)]~~ Consultation--Providing advice, opinions and conferring with other professionals regarding social work practice.

~~(16)~~ ~~[(24)]~~ Continuing education--Education or training aimed at maintaining, improving, or enhancing social work practice.

~~(17)~~ ~~[(22)]~~ Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

~~(18)~~ ~~[(23)]~~ Direct practice--Providing social work services through personal contact and immediate influence to help clients achieve goals.

~~(19)~~ ~~[(24)]~~ Dual or multiple relationship--A relationship that occurs when social workers interact with clients in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

~~(20)~~ ~~[(25)]~~ Electronic practice--Interactive social work practice that is aided by or achieved through technological methods, such as the web, the Internet, social media, electronic chat groups, interactive TV, list serves, cell phones, telephones, faxes, and other emerging technology.

~~[(26)]~~ ~~Endorsement--The process whereby the board reviews licensure requirements a professional has completed while under another jurisdiction's regulatory authority. The board may accept, deny or grant partial credit for requirements completed in a difference jurisdiction.]~~

~~(21)~~ ~~[(27)]~~ Examination--A standardized test or examination, approved by the Council, ~~[board]~~ which measures an individual's social work knowledge, skills and abilities.

~~(22)~~ ~~Equivalent or substantially equivalent--A licensing standard or requirement for an out-of-state license that is equal to or greater than a Texas licensure requirement shall be deemed equivalent or substantially equivalent.~~

~~(23)~~ ~~Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.~~

~~(24)~~ ~~[(28)]~~ Exploitation--Using a pattern, practice or scheme of conduct that can reasonably be construed as primarily meeting the licensee's needs or benefitting the licensee rather than being in the best interest of the client. Exploitation involves the professional taking advantage of the inherently unequal power differential between client and professional. Exploitation also includes behavior at the expense of another practitioner. Exploitation may involve financial, business, emotional, sexual, verbal, religious and/or relational forms.

~~(25)~~ ~~[(29)]~~ Field placement--A formal, supervised, planned, and evaluated experience in a professional setting under the auspices of a CSWE-accredited social work program and meeting CSWE standards.

~~[(30)]~~ ~~Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.]~~

~~(26)~~ ~~[(34)]~~ Fraud--A social worker's misrepresentation or omission about qualifications, services, finances, or related activities or information, or as defined by the Texas Penal Code or by other state or federal law.

(27) [(32)] Full-time experience--Providing social work services thirty or more hours per week.

(28) [(33)] Group supervision for licensure or for specialty recognition--Providing supervision to a minimum of two and a maximum of six supervisees in a designated supervision session.

(29) [(34)] Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(30) [(35)] Impaired professional--A licensee whose ability to perform social work services is impaired by the licensee's physical health, mental health, or by medication, drugs or alcohol.

(31) [(36)] Independent clinical practice--The practice of clinical social work in which the social worker, after having completed all requirements for clinical licensure, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement. Independent clinical social work occurs in independent settings.

(32) [(37)] Independent non-clinical practice--The unsupervised practice of non-clinical social work outside the jurisdiction of an organizational setting, in which the social worker, after having completed all requirements for independent non-clinical practice recognition, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement.

(33) [(38)] Independent Practice Recognition--A specialty recognition related to unsupervised non-clinical social work at the LBSW or LMSW category of licensure, which denotes that the licensee has earned the specialty recognition, commonly called IPR, by successfully completing additional supervision which enhances skills in providing independent non-clinical social work.

(34) [(39)] Individual supervision for licensure or specialty recognition--Supervision for professional development provided to one supervisee during the designated supervision session.

[(40) Investigator--A commission employee or other authorized person whom the board uses to investigate allegations of professional misconduct.]

(35) [(41)] LBSW--Licensed Baccalaureate Social Worker.

(36) [(42)] LCSW--Licensed Clinical Social Worker.

(37) [(43)] License--A regular or temporary Council-issued [board-issued] license, including LBSW, LMSW, and LCSW. Some licenses may carry an additional specialty recognition, such as LMSW-AP, LBSW-IPR, or LMSW-IPR.

(38) [(44)] Licensee--A person licensed by the Council board to practice social work.

(39) [(45)] LMSW--Licensed Master Social Worker.

(40) [(46)] LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a Council-approved [board-approved] supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.

(41) [(47)] Non-clinical social work--Professional social work which incorporates non-clinical work with individuals, families, groups, communities, and social systems which may involve locating resources, negotiating and advocating on behalf of clients or client groups, administering programs and agencies, community organizing,

teaching, researching, providing employment or professional development non-clinical supervision, developing and analyzing policy, fund-raising, and other non-clinical activities.

[(48) Peer assistance program--A program designed to help an impaired professional return to fitness for practice.]

(42) [(49)] Person--An individual, corporation, partnership, or other legal entity.

(43) [(50)] Psychotherapy--Treatment in which a qualified social worker uses a specialized, formal interaction with an individual, couple, family, or group by establishing and maintaining a therapeutic relationship to understand and intervene in intrapersonal, interpersonal and psychosocial dynamics; and to diagnose and treat mental, emotional, and behavioral disorders and addictions.

(44) [(51)] Recognition--Authorization from the Council [board] to engage in the independent or specialty practice of social work services.

(45) [(52)] Rules--Provisions of this chapter specifying how the Council [board] implements the Act as well as Title 22, Chapters 881 - 885 of the Texas Administrative Code. [How the board operates, and how individuals are affected by the Act.]

(46) [(53)] Social work case management--Using a bio-psychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client or client group.

(47) [(54)] Social worker--A person licensed under the Act.

(48) [(55)] Social work practice--Services which an employee, independent practitioner, consultant, or volunteer provides for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. Social work practice is guided by specialized knowledge, acquired through formal social work education. Social workers specialize in understanding how humans develop and behave within social environments, and in using methods to enhance the functioning of individuals, families, groups, communities, and organizations. Social work practice involves the disciplined application of social work values, principles, and methods including, but not limited to, psychotherapy; marriage, family, and couples intervention; group therapy and group work; mediation; case management; supervision and administration of social work services and programs; counseling; assessment, diagnosis, treatment; policy analysis and development; research; advocacy for vulnerable groups; social work education; and evaluation.

(49) [(56)] Supervisor, Council-approved [board-approved]--A person meeting the requirements set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), to supervise a licensee towards the LCSW, Independent Practice Recognition, or as a result of a Council [board] order. A Council-approved [board-approved] supervisor will denote having this specialty recognition by placing a "-S" after their credential initials, e.g., LBSW-S, LMSW-S or LCSW-S.

(50) [(57)] Supervision--Supervision includes:

(A) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(B) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services;

the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(C) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Council-approved ~~[board-approved]~~ supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved ~~[board-approved]~~ supervisor delivers this supervision;

(D) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved ~~[board-approved]~~ supervisor;

~~(E) supervision of a probationary Licensed Master Social Worker or Licensed Baccalaureate Social worker providing non clinical services by a board-approved supervisor toward licensure under the AMEC program; or~~

~~(E) [(F)] Council-ordered~~ ~~[board-ordered]~~ supervision of a licensee by a Council-approved ~~[board-approved]~~ supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

~~(51) [(58)]~~ Supervision hour--A supervision hour is a minimum of 60 minutes in length.

~~(52) [(59)]~~ Termination--Ending social work services with a client.

~~[(60) Texas Open Meeting Act--Government Code, Chapter 551.]~~

~~[(61) Texas Public Information Act--Government Code, Chapter 552.]~~

~~(53) [(62)]~~ Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the Council ~~[board]~~.

§781.202. Board Meetings.

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) The chairperson may call a meeting after consultation with board members or by a majority of members so voting at a meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, Government Code, Chapter 551.

§781.203. Board Training.

A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act.

§781.205. Board Agendas.

The executive director or designee is responsible for preparing and submitting an agenda to board members prior to each meeting; the agenda is subject to the chair's approval. The agenda shall include items requested by board members, items required by law, items previously tabled, and other matters of board business.

§781.206. Board Minutes.

(a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.

(b) Drafts of the meeting minutes shall be forwarded to each board member for review and comments or corrections prior to the board's approval.

(c) The official board meeting minutes shall be posted on the publicly-accessible board website.

§781.207. Elections.

(a) At the first meeting following the last day of January of each year, the board shall elect a vice-chair.

(b) A vacancy which occurs in the office of vice-chair may be filled at any meeting.

§781.208. Officers of the Board.

(a) The chair, who is appointed by the governor, shall preside at all meetings which he or she attends. The chair performs all duties prescribed by law or this chapter and is authorized to make day-to-day decisions regarding board activities to make the board more effective and responsive.

(b) The vice-chair shall perform the duties of the chair in case the chair is absent or disabled. If the office of chair becomes vacant, the vice-chair shall serve until a successor is appointed.

§781.209. Committees of the Board.

(a) The board and/or the board chair may establish board committees, advisory committees and task forces.

(b) The board chair shall appoint members of the board to serve on board committees and shall appoint the board committee chairs. The board chair may invite others to serve on advisory committees and task forces.

(c) Only members of the board may be appointed to board committees.

(d) Committee chairs shall make regular reports to the board at regular meetings.

(e) Committees shall meet when called by the committee chair or when so directed by the board or the board chair.

(f) Each committee shall consist of at least one public member and one professional member, unless the board authorizes otherwise.

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 June 29, 2020.

TRD-202002660

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.201 - 781.223

The Texas Behavioral Health Executive Council proposes the repeal of §§781.201 - 781.223, relating to code of conduct and

professional standards of practice. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rules' applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has

been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

- §781.201. *Code of Conduct.*
- §781.202. *The Practice of Social Work.*
- §781.203. *General Standards of Practice.*
- §781.204. *Relationships with Clients.*
- §781.205. *Sexual Misconduct.*
- §781.206. *Professional Representation.*
- §781.207. *Testing.*
- §781.208. *Drug and Alcohol Use.*
- §781.209. *Client Records and Record Keeping.*
- §781.210. *Billing and Financial Relationships.*
- §781.211. *Client Confidentiality.*
- §781.212. *Licensees and the Board.*
- §781.213. *Corporations and Business Names.*
- §781.214. *Consumer Information.*
- §781.215. *Display of License Certificate.*
- §781.216. *Advertising and Announcements.*
- §781.217. *Research and Publications.*
- §781.218. *Providing Social Studies.*
- §781.219. *Licensed Sex Offender Treatment.*
- §781.220. *Parent Coordination.*
- §781.221. *Parenting Facilitation.*
- §781.222. *Child Custody Evaluations.*
- §781.223. *Technology in Social Work Practice.*

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 June 29, 2020.

TRD-202002648

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER B. RULES OF PRACTICE

22 TAC §§781.301 - 781.313, 781.316 - 781.323

The Texas Behavioral Health Executive Council proposes new §§781.301- 781.313, 781.316- 781.323, relating to Rules of Practice.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152

of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the scope of practice, standards of care, and ethical practice for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.301. Code of Conduct.

A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.

(2) A social worker shall truthfully report her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker shall only offer those services that are within his or her professional competency, and shall provide services within accepted professional standards of practice, appropriate to the client's needs.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall be responsible for setting and maintaining professional boundaries.

(9) A social worker shall not have sexual contact with a client or a person who has been a client.

(10) A social worker shall refrain from providing services while impaired by physical health, mental health, medical condition, or by medication, drugs or alcohol.

(11) A social worker shall not exploit his or her position of trust with a client or former client.

(12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(13) A social worker shall refer a client for those services that the social worker is unable to meet, and shall terminate services to a client when continuing to provide services is no longer in the client's best interest.

§781.302. The Practice of Social Work.

(a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration.

(b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a Council-approved supervision plan, or under contract with an agency when under a Council-approved clinical supervision plan. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice.

(d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

(e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.

(g) A licensee who is not recognized for independent practice or who is not under a Council-approved non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the Council, unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure unless one holds the appropriate license or independent practice recognition.

(h) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in-home services such as in-home health care or the use of electronic media to provide services in an emergency.

(i) An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting but may not work independently, bill directly to patients or bill directly to third party payers, unless the LBSW or LMSW is under a formal Council-approved supervision plan.

§781.303. General Standards of Practice.

This section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes:

(1) shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent pro-

professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider;

(2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client by providing the client with the name and contact information of three sources of service;

(3) shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual;

(4) shall not persistently or flagrantly over treat a client;

(5) shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act;

(6) shall not participate in any way in falsifying licensure applications or any other documents submitted to the Council;

(7) shall ensure that, both before services commence and as services progress, the client knows the licensee's qualifications and any intent to delegate service provision; any restrictions the Council has placed on the licensee's license; the limits on confidentiality and privacy; and applicable fees and payment arrangements;

(8) if the client must barter for services, it is the professional's responsibility to ensure that the client is in no way harmed. The value of the barter shall be agreed upon in advance and shall not exceed customary charges for the service or goods; and

(9) shall ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate. Prior to commencement of social work services with a minor client who is named in a Suit Affecting Parent Child Relationship (SAPCR), the licensee shall ensure that all legally authorized persons representing the client have signed a consent for services, if applicable. A licensee shall maintain these documents in the client's record.

§781.304. Relationships with Clients.

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or five years beyond the age of 18 years of age for a minor, whichever is greater.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take all available steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

(r) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

§781.305. Sexual Misconduct.

(a) Definitions.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01, relating to assault.

(2) Therapeutic deception--A licensee's act or statement representing that sexual contact or sexual exploitation between the licensee and a client or client group is a valid part of the treatment process.

(3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a client or former client; a supervisee of the licensee; or a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred with the client's consent; outside appointments with the client; or off the premises the licensee used for appointments with the client.

(f) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01, relating to assault.

(g) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection shall contain information necessary to identify the licensee; identify the alleged victim, unless the alleged victim has requested anonymity; express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and provide the alleged perpetrator's name.

(h) The following may constitute sexual exploitation if done for sexual arousal, sexual gratification, or sexual abuse of either the social worker or a person who is receiving or has received the licensee's professional services as a social worker:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature;

(2) any behavior, gestures, comments, or expressions which may reasonably be interpreted as inappropriately seductive or sexual, including making sexual comments about a person's body or making sexually demeaning comments about an individual's sexual orientation, or making comments about potential sexual performance except when the comment is pertinent to issues of sexual function or dysfunction in counseling;

(3) initiating conversation about the licensee's sexual problems, preferences, or fantasies; or requesting details of sexual history or sexual likes and dislikes when those details are not necessary for counseling;

(4) kissing or fondling, or making any other deliberate or repeated comments, gestures, or physical acts of a sexual nature, even if they are not sexually intimate;

(5) making a request to date;

(6) exposing genitals, anus or breasts; or

(7) encouraging another person to masturbate in the licensee's presence; or the licensee masturbating in front of another person.

§781.306. Professional Representation.

(a) A social worker shall not misrepresent any professional qualifications or associations.

(b) A social worker shall not misrepresent the attributes of any agency or organization, or make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the effectiveness of any services.

(c) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the effectiveness of the social worker's services.

§781.307. Testing.

(a) A social worker shall inform clients about the purposes and explicit uses of any testing done as part of a professional relationship.

(b) A social worker shall not appropriate, reproduce, or modify published tests or parts thereof without the publisher's permission.

(c) A social worker shall not administer any test without the appropriate training and experience to administer the test.

(d) A social worker must observe the necessary precautions to maintain the security of any test administered by the social worker or under the social worker's supervision.

§781.308. Drug and Alcohol Use.

A licensee shall not use alcohol or drugs in ways that compromise the licensee's ability to practice social work.

§781.309. Client Records and Record Keeping.

Following applicable statutes, the licensee shall:

(1) keep accurate and legible records of the dates of services, types of services, progress or case notes, intake assessment, treatment plan, and billing information;

(2) retain and dispose of client records in ways that maintain confidentiality;

(3) in independent practice, establish a plan for the custody and control of the licensee's client records should the licensee die, become incapacitated, or cease offering professional services;

(4) keep client records for seven years after the date of termination of services for adult clients or five years beyond the age of 18 for minor clients, whichever is greater;

(5) provide a written explanation of the types of treatment and charges on a bill or statement to the client (this applies even if the charges are to be paid by a third party); and

(6) comply with the requirements of Texas Health and Safety Code, Chapters 161 and 611; Texas Family Code, Chapter 261; and other applicable state law concerning confidentiality of protected health information and the release of mental health records.

§781.310. Billing and Financial Relationships.

(a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(b) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(c) A licensee shall not knowingly or flagrantly overcharge a client, and shall bill clients and/or third parties for only those services that the licensee actually renders.

(d) Billing documents shall accurately reflect any collateral service the licensee uses to help serve the client.

(e) A licensee may not submit to a client and/or a third party payer a bill for services that the licensee knows were not provided, with the exception of a missed appointment, or knows were improper, unreasonable or unnecessary.

§781.311. Client Confidentiality.

(a) Communication between a licensee and client, as well as the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including rules of evidence, where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or client identity except as provided in the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other applicable state or federal statutes or rules.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.

(d) To release information for or about clients, a licensee shall have written permission signed by the client or the client guardian. That permission, which must be dated, shall include the client's name and

identifying information; the purpose for releasing the information; the individual or entity to which the information is released; the length of time the release is authorized; the signature of the client or guardian representative; and date of signature.

(e) The social worker shall maintain the written release of information in the permanent client record and shall review and update it at least every twelve months.

(f) A licensee shall report information if required by any of the following statutes:

(1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(g) A licensee may take reasonable action to inform only medical or law enforcement personnel if the professional determines that a client or others are at imminent risk of physical injury, or a client is in immediate risk of mental or emotional injury, in accordance with the Texas Health and Safety Code, Chapter 611, concerning mental health records.

§781.312. Licensees and the Council.

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

(c) The licensee shall report any and all employment setting changes to the Council within 30 days.

§781.313. Corporations and Business Names.

(a) An independent clinical practice or an independent non-clinical practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.

(b) When a licensee uses an assumed name in any social work practice, the social worker's name must be listed in conjunction with the assumed name. An assumed name or credential that the social worker uses shall not be false, deceptive, or misleading.

§781.316. Advertising and Announcements.

(a) Social workers' advertisements and announcements shall not contain deceptive, inaccurate, incomplete, out-of-date, or out-of-context information about services or competence. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, website entries, email, cell phone communications, social media communications, and billing statements.

(b) The Council imposes no restrictions on the advertising medium a social worker uses, including personal appearances, use of personal voice, size or duration of the advertisement or use of a trade name.

(c) All advertisements or announcements of a licensee's professional services, including website pages, social media communications, or telephone directory listings, shall clearly state the social worker's licensure designation and any specialty recognition, if any.

(d) A social worker shall not announce or advertise any information or reference to the social worker's certification in a field outside of social work that is deliberately intended to mislead the public.

(e) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

§781.317. Research and Publications.

(a) In research with a human subject, a social worker is responsible for the subject's welfare throughout a project, shall obtain informed consent and take reasonable precautions so that the subject shall suffer no injurious emotional, physical or social effect.

(b) A social worker shall disguise data obtained from a professional relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a social worker must recognize previous work on the topic, as well as observe all copyright laws.

(d) A social worker must give due credit through joint authorship, acknowledgment, footnote statements, Internet sources, or other appropriate means to those who have contributed significantly to the social worker's research or publication.

§781.318. Providing Social Studies.

Licensees shall comply with the Texas Family Code, Chapter 107, and other applicable laws when providing social studies.

§781.319. Licensed Sex Offender Treatment.

A social worker who is licensed as a sex offender treatment provider by the Council on Sex Offender Treatment is not subject to disciplinary action by the Council in relation to the social worker's provision of sex offender treatment. A social worker who is a sex offender treatment provider and who acts in conformance with the rules, policies, and procedures of the Council on Sex Offender Treatment is not subject to any administrative sanction by the Council. If the Council on Sex Offender Treatment takes disciplinary action against a social worker who is a sex offender treatment provider, the Council may consider the final order imposing such disciplinary action as grounds for disciplinary action by the Council.

§781.320. Parent Coordination.

(a) In accordance with the Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Family Code, §153.606, in a suit; and

(2) who:

(A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parenting coordinator is not acting under the authority of a license issued by the Council, and is not engaged in the practice of social work. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the Council, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide social work services to any person while simultaneously providing parenting coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§781.321. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.

(d) In accordance with the Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other social work services to any person while simultaneously providing parenting facilitation services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Family Code, Chapter 153.

(f) A licensee serving as a parenting facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(g) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in

reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function. A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(h) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(i) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator shall tailor the techniques used so as to avoid offering the opportunity for further coercion.

(j) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(k) A licensee serving as a parenting facilitator shall not provide legal advice.

(l) A licensee serving as a parenting facilitator shall serve by written agreement of the parties and/or formal order of the court.

(m) A licensee serving as a parenting facilitator shall not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(n) A licensee serving as a parenting facilitator shall maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(o) A licensee serving as a parenting facilitator:

(1) shall terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) shall not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) shall not coerce or improperly influence any party to make a decision;

(4) shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) shall not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would

compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(p) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a licensee for parenting facilitation or other professional referrals.

(q) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(r) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(s) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(t) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(u) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.

(v) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(w) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) shall maintain records necessary to support charges for services and expenses, and shall make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(x) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §781.209(4) of this title (relating to Client Records and Record Keeping), or as otherwise directed by the court.

(y) Records of a licensee serving as a parenting facilitator shall be released on the request of either parent, as directed by the court, or as directed by the Council.

(z) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(aa) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(bb) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(dd) The minimum training for a licensee serving as a parenting facilitator that is required by the Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and Council rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ee) A licensee serving as a parenting facilitator:

(1) shall complete minimum training as required by the Family Code, §153.6101, as determined by the appointing court;

(2) shall have extensive practical experience with high conflict or litigating parents;

(3) shall complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) shall regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(ff) A licensee serving as a parenting facilitator shall decline an appointment, withdraw, or request appropriate assistance when the

facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (dd) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

§781.322. Child Custody Evaluations.

(a) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F, concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(b) A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by the Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with the qualification requirements stipulated in Texas Family Code, Chapter 107.

(c) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be re-reported to the court that ordered the evaluation.

(d) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the Council.

(e) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable Council rules in this chapter regardless of whether the licensee is acting as a factual witness or an expert.

(f) A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.

(g) Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Chapter 107, Subchapter D.

(h) Licensees providing child custody evaluations or adoption evaluations shall, prior to beginning the evaluation, in writing inform the parties of:

(1) the limitations on confidentiality in the evaluation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(i) A Licensed Baccalaureate Social Worker shall not conduct child custody evaluations or adoption evaluations unless qualified to provide such services by another professional license or otherwise by Texas Family Code, Chapter 107.

§781.323. Technology in Social Work Practice.

When social workers use technology to provide services, they are subject to all rules and statutes, including this chapter and Occupations Code, Chapter 505, as if providing face to face services.

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 June 29, 2020.

TRD-202002656

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER C. THE BOARD

22 TAC §§781.301 - 781.317

The Texas Behavioral Health Executive Council proposes the repeal of §§781.301 - 781.317, relating to the Board. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will

be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code,

which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

- §781.301. *Board Rules.*
- §781.302. *Board Meetings.*
- §781.303. *Board Training.*
- §781.304. *Transaction of Official Board Business.*
- §781.305. *Board Agendas.*
- §781.306. *Board Minutes.*
- §781.307. *Elections.*
- §781.308. *Officers of the Board.*
- §781.309. *Committees of the Board.*
- §781.310. *Executive Director.*
- §781.311. *Official Records of the Board.*
- §781.312. *Impartiality and Non-discrimination.*
- §781.313. *Applicants with Disabilities.*
- §781.314. *The License.*
- §781.315. *Roster of Licensees.*
- §781.316. *Fees.*
- §781.317. *Criminal History Evaluation Letter.*

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 June 29, 2020.

TRD-202002649

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418 - 781.420, 781.508 - 781.510, 781.514

The Texas Behavioral Health Executive Council proposes new §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418 - 781.420, 781.508 - 781.510, 781.514, relating to Application and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will

have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.401. Qualifications for Licensure.

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning accept-

able to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of Council-approved supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of Council-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as an LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of Council-approved supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

§781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.

(a) A person who has obtained a temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the regular license is issued.

(b) An LMSW who plans to apply for the LCSW must:

(1) within 30 days of initiating supervision, submit to the Council one clinical supervisory plan for each location of practice for approval by the Council or its designee;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description or other relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;

(3) submit a separate supervision verification form for each location of practice to the Council for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification submitted by the supervisee;

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and

(5) submit an application for re-categorizing his/her licensure to Licensed Clinical Social Worker.

(c) An LMSW who plans to apply for the LCSW may not open an independent social work practice to provide clinical social work to clients.

(d) An LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

(1) submit one supervisory plan to the Council for each location of practice for approval by the Council or its designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;

(3) submit a separate supervision verification form for each practice location to the Council within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits; and

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location.

(e) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(1) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(4) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

§781.403. Independent Practice Recognition (Non-Clinical).

(a) An LBSW or LMSW who seeks to obtain Council approval for the specialty recognition of independent non-clinical practice shall meet requirements and parameters set by the Council in §781.401 of this title (relating to Qualifications for Licensure).

(b) An individual supervising an LBSW for independent non-clinical practice recognition shall be an LBSW recognized for independent non-clinical practice; an LMSW recognized for independent non-clinical practice; an LMSW-AP; or an LCSW. The supervisor shall be Council-approved.

(c) An individual supervising an LMSW for the independent non-clinical practice recognition shall be Council-approved and shall be an LMSW recognized for independent non-clinical practice, an LMSW-AP, or an LCSW.

(d) A person who has obtained only the temporary license may not begin supervision until the Council issues a regular license.

(e) The Council may use the Internal Revenue Service (IRS) guidelines developed in 1996 to demonstrate whether a professional is an independent contractor or an employee. These guidelines revolve around the control an employer has in an employer-employee relationship, in which the employer has the right to control the "means and details" by which services are performed.

(1) Behavioral control. The employer can control the employee's behavior by giving instructions about how the work gets done rather than simply looking at the end products of work. The more detailed the instructions, the more control the employer exercises. An employer requiring that employees be trained for the job is also an example of behavioral control, though contractors may also go through training.

(2) Financial control. The employer determines the amount and regularity of payments to employees. A contractor is typically paid when he/she completes the work, and the contractor usually sets a timeframe for completing the work. The most important element of financial control is that a contractor has more freedom to make business decisions that affect the profitability of his/her work. A contractor, for instance, may invest in renting an office or buying equipment, while the employee does not. While employees are usually reimbursed for job-related expenses, the contractor may or may not be reimbursed, but lack of reimbursement usually signals that a worker is independent. An independent contractor often makes his or her services available to other potential clients, while an employee does not.

(3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company's regular business, that denotes an employee status.

(f) An LBSW or LMSW who plans to apply for the specialty recognition of non-clinical independent practice shall follow procedures set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).

(g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice that has been approved by the Council.

§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Coun-

cil-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or

(6) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.

(4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.

(6) The Council-approved supervisor must submit required documentation and fees to the Council.

(7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise

an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(10) A Council-approved supervisor who wishes to provide any form of Council-approved or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four

hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. The plan must be approved by the Council.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or LMSW-AP or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. A month is a 30-day period or the length of the actual calendar month, whichever is longer.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Council-approved supervised professional experience towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

(12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential su-

pervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

(c) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council-Ordered Supervision Plan, to the Council for approval, shall receive a written response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow-up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council-approved plan without explicit authorization from the Council.

§781.405. Application for Licensure.

A licensure or specialty application must be submitted in accordance with Council §882.1 of this title (relating to Application Process) and §882.2 of this title (relating to General Application File Requirements).

§781.406. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.

(2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.

(c) Experience verification.

(1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating

to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form, both approved by the Council, for each practice location. If any elements described in the supervision plan change, including but not limited to work hours, full- or part-time work status, location of supervision, or name of supervisor, the applicant must submit the appropriate verification form within 30 days of the change or supervision termination. The applicant must submit a new, complete supervision plan for Council approval within 30 days of beginning the new supervision agreement.

(2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.

(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of application.

(4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

§781.411. Temporary License.

(a) Prior to examination, a licensure applicant may obtain a temporary social work license as long as the applicant meets all the requirements, except the licensing examination, for the license category the applicant seeks.

(b) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(c) The temporary license is valid until the licensee attempts the appropriate examination or the end of the six-month issuance of the temporary license.

(d) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.

(e) Should the applicant take and fail the examination, the temporary license is no longer valid. The applicant must immediately cease and desist from using the temporary license and title, and return the license certificate and certificate card to the Council.

(f) Should the applicant pass the examination, the Council will issue the license or specialty recognition. Temporary license holder who has passed the licensing examination continues to be temporarily licensed until the Council issues a regular license or the temporary license expires.

(g) A person who failed the examination and is without a valid temporary license may retake the examination under §781.412 of this title (relating to Examination Requirement).

(h) A temporary license will not be granted to an applicant who has held a temporary license for the same license category previously within his/her lifetime.

(i) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.

(j) Applicants requesting a temporary license must submit the application form and fee required by the Council.

§781.412. Examination Requirement.

(a) An applicant for licensure or specialty recognition must pass an examination designated by the Council.

(b) When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.

(c) If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must comply with Council §882.6 of this title (relating to Limitation on Number of Examination Attempts).

(d) The Council may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

(e) On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

§781.414. Issuance License Certificates.

The licensee must include the license title or associated initials in all professional uses of the licensee's name as required by the Act, §505.351, as in Licensed Clinical Social Worker - LCSW; Licensed Master Social Worker - LMSW; or Licensed Baccalaureate Social Worker - LBSW. If the licensee holds a specialty recognition, he or she shall use the specialty recognition initials as well: Licensed Master Social Worker with non-clinical Independent Practice Recognition - LMSW-IPR; Licensed Baccalaureate Social Worker with non-clinical Independent Practice Recognition - LBSW-IPR; or Licensed Master Social Worker with Advanced Practitioner Recognition -LMSW-AP.

§781.418. Issuance of Licenses to Certain Out-of-State Applicants.

(a) Notwithstanding any other licensing requirement of this chapter or the Act:

(1) The Council may not require an applicant who is licensed in good standing in another state to retake a licensing examination conducted by the Council under the Act if the applicant has passed the same examination in another jurisdiction.

(2) The Council may issue a license to an applicant who is currently licensed in another jurisdiction to independently practice social work if the Council determines that the applicant demonstrates sufficient experience and competence; has passed the licensing examination appropriate to the category of licensure the applicant seeks; has passed the jurisprudence examination conducted by the Council under the Texas Occupations Code, §505.3545; and is in good standing with the regulatory body of the licensing jurisdiction at the time the applicant applied in Texas.

(b) When assessing the applicant's experience and competence, the Council may consider any supervision the applicant received in another jurisdiction if the Council determines that the supervision would be considered for licensing or certification in the jurisdiction in which the applicant received the supervision.

§781.419. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant applying for licensure under this section must comply with Council §882.60 (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.

(c) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

§781.420. Licensing of Persons with Criminal Backgrounds.

The following felonies and misdemeanors directly related to the duties and responsibilities of a licensee:

- (1) failing to report child abuse or neglect;
- (2) a criminal act involving deceptive business practices;
- (3) the offense of assault or sexual assault;
- (4) the felony offense of fraud;
- (5) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (6) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (7) any criminal violation of the Act;
- (8) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (9) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;
- (10) any criminal violation of Sections 32.42 (Deceptive Business Practices), 32.43 (Commercial Bribery), 32.45 (Misapplication of Fiduciary Property), 32.46 (Securing Execution of Document by Deception), 32.50 (Deceptive Preparation and Marketing of Academic Product), 32.51 (Fraudulent Use or Possession of Identifying Information), 32.52 (Fraudulent, Substandard, or Fictitious Degree), or 32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;
- (11) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;
- (12) any offense involving the failure to report abuse;
- (13) any criminal violation of Section 38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;
- (14) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (15) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
- (16) any attempt, solicitation, or conspiracy to commit an offense listed herein;
- (17) any criminal violation of section 22.041 (abandoning or endangering a child);
- (18) any criminal violation of section 21.15 (invasive visual recording);
- (19) any criminal violation of section 21.08 (indecent exposure);
- (20) any criminal violation of section 22.02 (aggravated assault);
- (21) any criminal violation of section 25.04 (enticing a child);

(22) any criminal violation of section 43.26 (possession of child pornography);

(23) any criminal violation of section 20.03 (kidnapping);
and

(24) any criminal violation of chapter 19 (criminal homicide).

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete a total of 30 clock-hours biennially of continuing education which also includes the first renewal of the licensure following issuance of the license.

(b) As part of the required 30 biennial clock-hours, a licensee must complete a minimum of six clock-hours of continuing education in professional ethics and social work values.

(c) A clock-hour is defined as 60 minutes of standard time.

(d) A licensee may earn credit for ethics as a presenter or a participant.

§781.509. Types of Acceptable Continuing Education.

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations the education must be received from a continuing education provider that:

(1) ensures that the education provided is directly related to the practice of social work;

(2) ensures that the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;

(3) verifies attendance of participants and provides participants with a letter, certificate, or transcript that displays the licensee's name, topic covered, date(s) or academic period course was taken, and hours of credit earned;

(4) provides participants a mechanism for evaluation of each continuing education activity; and

(5) maintains all continuing education records and documentation for at least three years.

§781.510. Activities Unacceptable as Continuing Education.

The Council will not give credit hours for:

(1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in-service programs required as a part of one's job, unless the in-service training is acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education);

(4) college academic courses which are audited or not taken for credit; or

(5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

§781.514. Credit Hours Granted.

The Council will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour will be given for each hour of participation in a continuing education program.

(2) Credit may be earned, post-licensure, through successfully completing postgraduate training programs (e.g., intern, residency, or fellowship programs) or successfully completing social work courses in a graduate school of social work at a rate of five credit hours per each semester hour or its equivalent not to exceed 10 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title (relating to Hour Requirements for Continuing Education) only through a course specifically designated as an ethics course.

(3) Credit may be earned for teaching social work courses in an accredited college or university. Credit will be applied at the rate of five credit hours for every course taught, not to exceed 15 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title only through teaching a course specifically designated as an ethics course.

(4) A field instructor for a social work intern will be granted five credit hours for each college semester completed, not to exceed 20 credit hours per renewal period.

(5) A presenter of a continuing education program or an author of a published work, which imparts social work knowledge and skills, may be granted five credit hours for each original or substantially revised presentation or publication, not to exceed 20 credit hours per renewal period.

(6) A licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements. Continuing education earned during the licensee's birth month may be used for the current renewal or for the following year.

(7) Completing the jurisprudence examination shall count as three hours of the continuing education requirement in ethics and social work values, as referenced in §781.508(b) of this title.

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002657

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §§781.401 - 781.419

The Texas Behavioral Health Executive Council proposes the repeal of §§781.401-781.419, relating to licenses and licensing process. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507

of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

- §781.401. *Qualifications for Licensure.*
- §781.402. *Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.*
- §781.403. *Independent Practice Recognition (Non-Clinical).*
- §781.404. *Recognition as a Board-approved Supervisor and the Supervision Process.*
- §781.405. *Application for Licensure.*
- §781.406. *Required Documentation of Qualifications for Licensure.*
- §781.407. *Fitness of Applicants for Licensure.*
- §781.408. *Materials Considered in Determination of Fitness of Applicants.*
- §781.409. *Finding of Non-fitness.*
- §781.410. *Provisional Licenses.*
- §781.411. *Temporary License.*
- §781.412. *Examination Requirement.*
- §781.413. *Alternate Method of Examining Competency (AMEC) Program.*
- §781.414. *Issuance of License Certificates.*
- §781.415. *Application Denial.*
- §781.416. *Required Reports of the Board.*
- §781.417. *Surrender of License.*
- §781.418. *Issuance of Licenses to Certain Out-of-State Applicants.*
- §781.419. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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 June 29, 2020.

TRD-202002650

Darrel D. Spinks
Executive Director

Texas State Board of Social Worker Examiners
Earliest possible date of adoption: August 16, 2020
For further information, please call: (512) 305-7706



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §§781.801, 781.803 - 781.805

The Texas Behavioral Health Executive Council proposes new §§781.801, 781.803 - 781.805, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a

schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to a schedule of sanctions for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment

of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code which states the

Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.801. Purpose.

The schedule of sanctions is adopted by rule pursuant to the Act, §505.2015(2).

§781.803. Severity Levels.

The following are severity levels for the schedule of sanctions:

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require termination of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

§781.804. Other Disciplinary Actions.

Complaints may be resolved by issuance of a warning letter or a conditional letter of agreement, which do not involve a formal disciplinary action.

(1) Warning letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of may appear to violate such duties.

(2) A conditional letter of agreement informs the licensee of the licensee's duties under the Act of this chapter, whether the conduct or omission complained of may appear to violate such duties, and creating Council ordered conditions for the resolution of the issues in the complaint. Staff may issue the conditional letter of agreement to the licensee, a signature by the licensee is required, and the letter will specify the disposition of the complaint. If the licensee fails to comply with all the Council ordered conditions in the specified time frame outlined in the conditional letter agreement, staff will open a new complaint arising out of non-compliance with the conditional letter agreement and/or the underlying conduct.

§781.805. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §781.805.

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 June 29, 2020.

TRD-202002659

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.501 - 781.517

The Texas Behavioral Health Executive Council proposes the repeal of §§781.501 - 781.517, relating to licensing renewal and continuing education. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to

perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council

estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

- §781.501. *General.*
- §781.502. *Renewal Cycles.*
- §781.503. *License Renewal.*
- §781.504. *Late Renewal.*
- §781.505. *Inactive Status.*
- §781.506. *Emeritus Status.*
- §781.507. *Active Military Duty.*
- §781.508. *Hour Requirements for Continuing Education.*
- §781.509. *Types of Acceptable Continuing Education.*
- §781.510. *Activities Unacceptable as Continuing Education.*
- §781.511. *Requirements for Continuing Education Providers.*
- §781.512. *Evaluation of Continuing Education Providers.*
- §781.513. *Acceptance of Continuing Education Approved by Another Licensing Board.*
- §781.514. *Credit Hours Granted.*
- §781.515. *Continuing Education Documentation.*
- §781.516. *Requirements of Supervisor Training Course Providers.*
- §781.517. *Evaluation of Supervisor Training Course Providers.*

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 June 29, 2020.

TRD-202002651

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706

SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.601 - 781.610

The Texas Behavioral Health Executive Council proposes the repeal of §§781.601 - 781.610, relating to complaints and violations. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period

the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number

of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.601. *Purpose.*

§781.602. *Disciplinary Action and Notices.*

§781.603. *Complaint Procedures.*

§781.604. *Ethics Committee Meetings and Policy.*

§781.605. *Informal Conferences.*

§781.606. *Licensing of Persons with Criminal Backgrounds.*

§781.607. *Suspension, Revocation, or Non-renewal.*

§781.608. *Informal Disposition.*

§781.609. *Monitoring of Licensees.*

§781.610. *Due Process Following Violation of an Order.*

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002652

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER G. FORMAL HEARINGS

22 TAC §§781.701 - 781.704

The Texas Behavioral Health Executive Council proposes the repeal of §§781.701 - 781.704, relating to formal hearings. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five

years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.701. *Purpose.*

§781.702. *Notice.*

§781.703. *Default.*

§781.704. *Action after Hearing.*

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 June 29, 2020

TRD-202002653

Darrel D. Spinks
Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706



SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §§781.801 - 781.808

The Texas Behavioral Health Executive Council proposes the repeal of §§781.801 - 781.808, relating to Sanction Guidelines. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or

local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the

Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§781.801. *Purpose.*

§781.802. *Relevant Factors.*

§781.803. *Severity Level and Sanction Guide.*

§781.804. *Other Disciplinary Actions.*

§781.805. *State Office of Administrative Hearings.*

§781.806. *Probation.*

§781.807. *Release from Probation.*

§781.808. *Peer Assistance Program.*

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 June 29, 2020.

TRD-202002654

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 305-7706

◆ ◆ ◆

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER A. PROOF OF RESIDENCY REQUIREMENTS

31 TAC §55.1

The Texas Parks and Wildlife Department (the department) proposes an amendment to §55.1, concerning Proof of Residency. Currently, 31 TAC, Subchapter A, provides for criminal prosecution of persons who unlawfully obtain a license in the person's name the purchase of which is limited to Texas residents. The proposed amendment would clarify that the offense a person who is not a resident of Texas commits when he or she illegally possesses such a license is a Class C misdemeanor.

Under Parks and Wildlife Code, §42.005, no nonresident in this state may hunt any bird or animal in this state without having acquired the appropriate license, while §42.006 of the code authorizes the commission to prescribe by rule the requirements relating to possession of a license issued under Chapter 42. Similarly, Parks and Wildlife Code, §46.001, provides that no person

may fish in the public water of this state unless that person has obtained the appropriate fishing license. In addition, this section provides authority to the commission to prescribe by rule the requirements relating to the possession of licenses issued under the authority of Chapter 46.

Current rules at 31 TAC Chapter 55, Subchapter A, provide for the various methods by which residency in Texas may be demonstrated for purposes of purchasing a resident hunting or fishing license and provide for the criminal prosecution of persons who obtain a resident license unlawfully. There is, however, no provision in rule that identifies the specific criminal offense applicable to possession of a resident license by a non-resident (i.e., possession of a license for which the person is not eligible). Texas is a member of the Interstate Wildlife Violator Compact, an interstate agreement that allows state fish and wildlife agencies to share information regarding fishing, hunting, and trapping violations for purposes of suspending or revoking license privileges of violators in member states. The department has encountered situations in which the absence of a specific violation has frustrated the department's ability to identify persons who claim residency in more than one state for purposes of obtaining hunting and/or fishing licenses. This limitation reciprocally hampers investigations in other states when the residency status of a violator claiming Texas residency cannot be definitively established for purposes of enforcement actions in the state where the violation occurred. The proposed amendment also provides that a person who provides electronic proof of licensure is considered to be in possession of the license purported to be held.

Kevin Davis, Chief of Staff for the Law Enforcement Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Davis also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of the department to discourage the purchase of resident hunting and fishing licenses by persons who are not Texas residents.

There will be no adverse economic effects on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, micro-business, or rural communities will be affected by the proposed rules. Therefore, the department has not prepared the

economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, but clarify an existing prohibition regarding the penalty for illegal possession of a resident hunting or fishing license; not repeal, expand, or limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chief Kevin Davis (512) 389-4846, e-mail: kevin.davis@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §42.006, which authorizes the commission to prescribe by rule the requirements relating to possession of a license issued under Chapter 42, and §46.001 which authorizes the commission to prescribe by rule the requirements relating to the possession of licenses issued under the authority of Chapter 46.

The proposed amendment affects Parks and Wildlife Code, Chapters 42 and 46.

§55.1. Proof of Residency.

(a) The requirements of this section are in addition to any requirements of Parks and Wildlife Code, Chapters 42 and 46.

(1) - (8) (No change.)

(b) It is an offense for any person who does not meet the residency requirements of this section to possess a license in that person's name that is required by law for conduct governed by Parks and Wildlife Code, Chapter 42 or Chapter 46 if the acquisition and use of the license is restricted by law to Texas residents.

(c) For purposes of this section, a person who utilizes the provisions of 53.2(g) of this title (relating to License Issuance Procedures, Fees, Possession, and Exemption Rules) to satisfy proof of licensure requirements is considered to be in possession of the license the person purports to have obtained.

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 July 6, 2020.



CHAPTER 69. RESOURCE PROTECTION

SUBCHAPTER B. FISH AND WILDLIFE VALUES

The Texas Parks and Wildlife Department (the department) proposes the repeal of §69.30, concerning Trophy Wildlife Species and an amendment to §69.20, concerning Application. The proposed repeal and amendment would function to eliminate provisions governing the imposition of enhanced civil restitution penalties for trophy specimens of white-tailed deer, mule deer, pronghorn antelope, and desert bighorn sheep taken in violation of the Texas Parks and Wildlife Code or rules of the commission.

Under Parks and Wildlife Code, §12.301, a person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of the Parks and Wildlife Code or a proclamation or regulation adopted under the Parks and Wildlife Code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured. Under Parks and Wildlife Code, §12.302, the Parks and Wildlife Commission is required to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals, which are located at 31 TAC Chapter 69, Subchapter B. Those values are commonly referred to as "civil restitution values."

In 1996 the commission adopted rules providing for enhanced civil restitution values of trophy specimens of white-tailed deer, mule deer, pronghorn antelope, and desert bighorn sheep taken in violation of applicable laws, which reflected the relative rarity of such animals at that time. The department has determined that during the intervening years, techniques of wildlife management have become more effective and much more widely practiced, which, in concert with successful department programs such as the Managed Lands Deer Program and other technical guidance efforts, have led not only to increased numbers of so-called "trophy" animals, but to antler and horn characteristics of individual trophy animals that are far more impressive than what has occurred in the past. Therefore, the department has determined that the original justification for trophy restitution no longer exists and the provisions imposing civil restitution for trophy animals are no longer necessary.

Kevin Davis, Chief of Staff for the Law Enforcement Division, has determined that for each of the first five years that the rules are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules. The original purpose of the rule being repealed is to recover the replacement cost of trophy wildlife taken in violation of the law. Because the department has determined that the original reason for the rule no longer exists, the current base replacement value for each species of animal is now sufficient to satisfy the goal of civil restitution.

Chief Davis also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit

anticipated as a result of enforcing or administering the rule as proposed will be the elimination of unnecessary regulations.

There will be no adverse economic effects on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, microbusiness, or rural communities will be affected by the proposed rules. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; repeal an existing regulation but not expand or limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chief Kevin Davis (512) 389-4846, e-mail: kevin.davis@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

31 TAC §69.20

The amendment is proposed under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of fish, shellfish, reptiles, amphibians, birds, and animals injured or destroyed in violation of the Parks and Wildlife Code or rules of the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 12.

§69.20. Application.

(a) Rules under this subchapter establish guidelines for measuring the monetary value of each individual of any species of aquatic life or wildlife:

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

(b) The values assigned to wildlife species or aquatic species, including any value added for endangered or threatened species [~~or trophy game animals,~~] and values of other species not listed but derived by application of these guidelines are prima facie evidence of damages recoverable for the unlawful catching, killing, possession, injury or taking of such species.

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 July 6, 2020.

TRD-202002756

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 389-4775



31 TAC §69.30

The repeal is proposed under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of fish, shellfish, reptiles, amphibians, birds, and animals injured or destroyed in violation of the Parks and Wildlife Code or rules of the commission.

The proposed repeal affects Parks and Wildlife Code, Chapter 12.

§69.30. Trophy Wildlife Species.

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 July 6, 2020.

TRD-202002755

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 389-4775



SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

31 TAC §§69.43 - 69.52

The Texas Parks and Wildlife Department (the department) proposes amendments to §§69.43 - 69.52, concerning Wildlife Rehabilitation Permits. The proposed amendments would function, collectively, to address issues and concerns relating generally to wildlife disease control and response, and specifically to the detection and management of chronic wasting disease (CWD), a

neurodegenerative disease that is fatal to white-tailed and mule deer, which has been confirmed in multiple locations in this state in both captive and free-ranging herds. Additionally, the proposed amendments would effect housekeeping-type changes to standardize and modernize the rules, the majority of which were last amended in 1997.

In response to the emergence of CWD in both free-ranging and captive populations of indigenous species of deer over the last five years, the department has acted to implement CWD management and control strategies by rule with respect to the movement of deer held under various department permits. A major component of that strategy has been to implement regulatory identification, reporting, and recordkeeping requirements to make epidemiological investigations easier, more efficient, and more productive. As part of this continuing effort, the department has identified wildlife rehabilitation activities involving deer as an area of concern. The proposed amendments therefore contain specific provisions regarding facility and testing requirements for deer. Further informing this rulemaking is the impact and causality of the SARS-CoV-2 (COVID-19) pandemic, which has introduced additional dimensions of concern, since it originated as a wildlife disease before jumping to human populations. Because it is obvious that the possibility that disease outbreaks in indigenous wildlife could pose a threat to other indigenous wildlife, livestock, and human health and safety, the department has determined that it is both prudent and necessary to amend the rules governing wildlife rehabilitation to put a number of proactive measures in place to address that possibility and facilitate management and control activities should such a situation arise in the future, including provisions to reduce the number of unpermitted individuals that are allowed to engage in permitted activities, to identify the specific facilities and places where permitted activities take place, the initiation of electronic reporting requirements (including a daily log), requirements regarding the release, retention, and disposition of rehabilitated wildlife, the use of regulated medications and biologicals, improvements to training and certification standards, and transfer of wildlife to other rehabilitators. The proposed amendments make several repetitive, nonsubstantive changes throughout the rulemaking, such as replacing "permit holder" with "permittee," "rehabilitation" with "activities authorized under a permit issued under this subchapter," and so forth.

The proposed amendment to §69.43, concerning Definitions, would add a definition for "wildlife," alter the definition for "subpermittee," and eliminate the definitions of "release to the wild," "supervisory responsibility," "transportation," and "volunteer." The definition of "release to the wild" is superfluous, since the common and ordinary meaning of "release" is sufficient for the purpose of the rules and the various provisions of the subchapter prescribe the conditions and requirements for the release of rehabilitated protected wildlife. The definitions of "supervisory responsibility" and "volunteer" are being eliminated because the department is proposing not to allow unpermitted persons, other than subpermittees (volunteers) named on a permit, to conduct activities under a permit and those definitions are therefore superfluous. The definition of "transportation" is being eliminated because the department has determined that the plain and ordinary meaning of the word is sufficient for the purposes of the rules. The definition of "subpermittee" is being altered to eliminate references to supervisory responsibility, which is necessary because the proposed amendments would redefine persons lawfully allowed to conduct permitted activities. Finally, the term "wildlife" would be defined as "protected wildlife" for

purposes of consistency. Parks and Wildlife Code, Chapter 43, Subchapter C defines and employs the term "protected wildlife," while the rules use the terms "wildlife" and "protected wildlife" interchangeably. The change is intended to eliminate confusion. Under Parks and Wildlife Code, Chapter 43, Subchapter C, no person may collect, hold, possess, display, transport, release, or propagate protected wildlife for the purposes of rehabilitation without a permit issued by the department.

The amendment to §69.44, concerning General Provisions, would consist of several actions. The proposed amendment would alter subsection (a) to require facilities where rehabilitation activities take place to be registered with the department via an electronic application provided by the department for that purpose. One of the critical components of effective disease outbreak response is to be able to quickly perform contact tracing, meaning the identification of the specific places that specific animals may have come into contact with other animals or people. In concert with other provisions of this rulemaking that eliminate the use of unnamed volunteers, restrict rehabilitation activities to permittees and subpermittees at registered facilities, and require the maintenance of a daily log, the registration of the facilities, permittees, and subpermittees would allow the department to maintain a real-time inventory of persons, places, and animals, which would eliminate both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities.

Under current rules a permittee may designate subpermittees and allow subpermittees to supervise rehabilitation activities by unnamed volunteers at multiple locations unknown to the department. The provisions are almost 30 years old. Parks and Wildlife Code, Chapter 43, Subchapter C prohibits wildlife rehabilitation for profit, and at one time, the department sought to allow rehabilitators maximum latitude in obtaining and utilizing human resources. This approach has led to a proliferation of unnamed volunteers in unknown locations. This is extremely problematic from a disease management perspective, for a variety of reasons. When a disease outbreak occurs, it is important to quickly identify the origin of the outbreak, or "index case." From that point the movement of animals and people into and away from the index case (traceback and trace forward) must be identified. When there is no chain of documentation to follow, disease response and management is hampered if not stymied. The proposed amendment to §69.44(b) would require all subpermittees to conduct activities at a registered facility. In concert with proposed reporting and recordkeeping requirements, this would allow the department in a disease emergency to quickly identify the people, places, and animals that have come into contact with each other.

The proposed amendment to §69.44(c) would make nonsubstantive changes to references.

The proposed amendment to §69.44(d) would prohibit the commingling of domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife with animals being rehabilitated, which is necessary to reduce the probability that wildlife will transmit disease to or acquire disease from external sources.

The proposed amendments to §69.44(e) - (g) would make nonsubstantive changes to improve accuracy and clarity.

The proposed amendment to §69.44(h) makes nonsubstantive changes and prohibits the conduct of rehabilitation activities on the same property as a deer breeding facility, which is already a provision of the rules under current subsection (d) but is being stated explicitly for purposes of clarity to emphasize the necessity of preventing the accidental spread of disease to confined populations.

The proposed amendment to §69.44(i) would make nonsubstantive changes and create a new requirement that requests to retain non-releasable wildlife (wildlife that cannot survive on their own) be accompanied by a statement from veterinarian that the animal cannot be released and the reasons why. The proposed new provisions also would stipulate that the department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself. The department lacks the resources to evaluate an increasing number of requests to retain wildlife. Requiring a statement from a veterinarian will assist the department in evaluating each case. The proposed amendment also would eliminate current subsection (i)(2), a grandfather clause that is no longer applicable.

The proposed amendment to §69.44 also would alter current subsection (i) to specify that all medical treatment, including vaccinations, be performed in accordance with applicable laws governing the extra-label use of medications and biologicals. Veterinarians may prescribe medications and biologicals for animal uses not addressed in the product labelling of the medication or biological; however, such usage is regulated by federal law. The proposed amendment would clarify that such regulation also applies to wildlife rehabilitation and rehabilitators.

The proposed amendment to §69.44 would alter current subsection (j) to require wildlife mortalities to be either transferred to an authorized person or disposed of in a Type 1 landfill. Current rules do not specify the destination for final disposition of mortalities that are not donated or transferred to other types of permittees for other purposes. Diseases can be spread by incomplete or inadequate disposal techniques such as shallow interment, interment in contact with groundwater resources, partial incineration, and so forth. Accordingly, the department believes it is prudent to require that all expired wildlife that cannot be transferred to another person permitted to receive the specimens be disposed of in a manner that prevents or mitigates disease transmission, such as transfer to a Type I landfill. The proposed amendment would also require deer mortalities older than six months of age to be tested for CWD, for reasons discussed in other parts of this preamble regarding consistency with the department's CWD management strategy.

The proposed amendment to §69.44 would add new subsection (k), which would require all permittees who rehabilitate deer to attach permanent identification to each deer, notify the department of each deer mortality within 24 hours of discovery, and release rehabilitated deer via the same administrative mechanism used by deer breeders for releases. As noted previously in this preamble, CWD has been detected in multiple deer breeding facilities. Deer confined in rehabilitation facilities also present a risk of CWD transmission. Permanent identification, immediate reporting and testing of mortalities, and the reporting and tracking of deer transfers are all critical components of epidemiological efficacy of department actions to manage CWD.

Finally, the proposed amendment would add new subsection (p) to provide that the department may designate a manual process in lieu of any electronic application requirement of the subchapter if for whatever reason the electronic application is unavailable.

The department recognizes that there may be circumstances under which technological systems may be unavailable and believes it is prudent to provide for an alternative method of compliance by permittees.

The proposed amendment to §69.45, concerning Permit Required, would prohibit the rehabilitation of any wildlife by persons other than permitted wildlife rehabilitators. All wildlife resources are critical components of functioning ecosystems, as well as being the property of the people of the state, and the department has determined that as such, medical treatment of that wildlife should not be attempted by or entrusted to persons who do not possess adequate training, guidance, or regulatory oversight to do so. The department notes that this provision does not affect any person's legal ability, in accordance with existing rules, to possess nongame species that are not injured or sick. The proposed amendment also would eliminate a reference to a permittee's choice of consulting veterinarian and includes various non-substantive alterations and conforming changes necessitated by amendments to other sections.

The proposed amendment to §69.46, concerning Application for Permit, would incorporate provisions from current §69.47 concerning Qualifications, with modifications. Under current rules, the qualifications for applicants are enumerated in two sections (§69.46 and §69.47) and state that wildlife rehabilitation permits may be issued only to qualified individuals who are at least 18 years of age, provide letters of recommendation from two persons who are conservation scientists or game wardens currently employed by the department, licensed veterinarians, or permitted wildlife rehabilitators who have known the applicant for at least two years, and one of the following: completion of a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association within the preceding three years; attendance at a national wildlife rehabilitation conference within the preceding three years; membership in a state or national wildlife rehabilitation organization; or a test score of 80 or above on a department-administered wildlife rehabilitation examination. The proposed amendment would place all provisions governing permit application and qualifications in a single section, with modifications. The proposed amendment would retain the minimum age requirement and require applicants to have completed a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association, but would eliminate the provisions allowing attendance at a national wildlife rehabilitation conference within the preceding three years or membership in a state or national wildlife rehabilitation organization to be options for initial permit issuance in lieu of the required training (they would, however, be acceptable for purposes of permit renewal). The department has concluded, in light of recent developments concerning wildlife diseases, that it is appropriate to professionalize the requirements for issuance of wildlife rehabilitation permits; therefore, the proposed amendment would require certification for initial permit issuance and allow continuing education activities to be considered for permit renewals. The proposed amendment also would replace the current standard of an 80 percent grade on a department test with a 100% standard. The department believes that permittees should know the rules governing wildlife rehabilitation and the rudiments of the activity, and further notes that applicants make take the test as many times as necessary to achieve a passing score.

The amendment to §69.47, concerning Qualifications, would retitle the section as Refusal of Permit Issuance or Renewal; Review, which is necessary to make the title germane to the

contents of the section. As noted previously in this preamble, the proposed amendment would remove the contents of current subsection (a) and relocate them, with modifications, to §69.46, concerning Application for Permit. The proposed amendment also would correct an erroneous reference to Parks and Wildlife Code, Chapter 88, replacing it with a reference to Chapter 43. Chapter 88 governs endangered, threatened, and protected native plants.

The proposed amendment to §69.48, concerning Permit Renewals, would establish the criteria for permit renewal, which would consist of an applicant satisfying one of three requirements: completion of a specified training course in wildlife rehabilitation, evidence of certification by an accepted professional association germane to wildlife rehabilitation, or attendance at a national wildlife rehabilitation conference within the previous three years. The department believes that continuing education and professional development are important components of efficacious wildlife rehabilitation efforts involving a public resource that should be required by rule.

The amendment to §69.49, concerning General Facilities Standards, would establish specific facility requirements for the rehabilitation of deer. As noted earlier in this preamble, CWD is a fatal neurological disease that affects and is transmissible by and between white-tailed and mule deer, among other species. Other department regulations governing the holding of deer in captivity and the human-caused movement of deer under department permits stipulate that deer held in captivity must be kept in enclosures that prevent both escape and contact with other susceptible species. To prevent the spread of CWD, the department believes it is prudent to impose this standard on deer being rehabilitated as well.

The amendment to §69.50, concerning Transfers, would make nonsubstantive changes and prohibit the transfer of deer to rehabilitators in other states. The interstate movement of CWD susceptible species is highly regulated at the federal and state levels, and the department sees potential risk of disease spread in allowing deer to be transferred to other states.

The amendment to §69.51, concerning Release of Rehabilitated Wildlife, would make nonsubstantive changes, clarify that causing or allowing the release of wildlife is considered by the department to be the same thing as personally acting to release wildlife, impose requirements for sites where deer are released after rehabilitation, and clarify that the rules governing release of rehabilitated wildlife do not supersede applicable provisions of local, state, or federal law. The current rule prohibits a permittee from releasing wildlife likely to become a nuisance, a disease threat, or a depredation threat. Although a permittee is ultimately responsible for the disposition of all wildlife in possession, the department would like to clarify that release provisions are not limited to the personal actions of a permittee, but to any actions by any person under or at the direction of the permittee. As discussed elsewhere in this preamble, the department is concerned and has acted to impose a disease management strategy to prevent the spread of CWD in deer populations. The proposed amendment would apply the strategy to rehabilitated deer, specifying release site fencing requirements necessary to prevent escape of deer, the registration of the release site with the department, and the written agreement of the owner of the release site to maintain the fencing, all which are necessary to provide the minimum assurance that released deer do not contract or spread CWD through contact with free-ranging deer. Finally, the proposed amendment would clarify that no provision in

the section absolves any person from the requirements of applicable local, state, or federal law. Other governmental entities have various legal authorities to regulate the possession and movement of different animals, such as the Department of State Health Services with respect to rabies control, the Animal Health Commission for various communicable livestock diseases, and so forth. The department wishes to be abundantly clear that a rehabilitation permit does not override any person's legal obligation to comply with such laws, when applicable.

The amendment to §69.52, concerning Reports, would retitle the section as "Reports and Recordkeeping" to make the title of the section more accurate and add new subsection (a) to create a daily log requirement. In concert with other provisions of this rulemaking that eliminate the use of unnamed volunteers and restrict rehabilitation activities to permittees and subpermittees at registered facilities, the daily log would allow the department to maintain a real-time inventory of persons, places, and animals that have come into contact, which eliminates both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities, and the department believes that prevention of potential spread of CWD warrants requiring wildlife rehabilitators to comply with the same reporting and recordkeeping standards.

Meredith Longoria, Endangered and Rare Species Program Leader for the Wildlife Division, has determined that for each of the first five years that the rules are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules, because the rules will be administered and enforced by existing personnel using existing systems, equipment, and budget.

Ms. Longoria also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the implementation of rules that will increase the biosecurity of wildlife rehabilitation activities in the state, thereby protecting native wildlife populations and natural systems, as well as having the benefit of protecting human and livestock health and safety.

There will be adverse economic effects on persons required to comply with the rules as proposed. The proposed amendments would require permittees to obtain a statement from a veterinarian attesting to the facts and conditions supporting a determination that a rehabilitated animal is non-releasable. The department believes that most veterinarians who have an existing relationship with a rehabilitator will probably perform this function as part of the existing relationship; however, it is also possible that a veterinarian would charge a fee similar to that for an office visit, which the department estimates at \$30 - \$70. Additionally, the proposed amendments would require deer accepted for rehabilitation to be identified by attaching an RFID tag and a bangle tag, which the department estimates to be less than \$10 per animal. Finally, the proposed amendment would require expired wildlife under certain circumstances to be disposed of in Class I landfill. The department has determined that fees for acceptance of dead animals vary widely across the state, but estimates the probable cost per animal to be \$20 - \$100, depending on the size of the animal.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, microbusiness, or rural communities will be affected by the proposed rules, because it is unlawful to conduct wildlife rehabilitation on a for-profit or commercial basis in this state. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (requirement for electronic reporting, daily log, deer identification, landfill disposal of expired wildlife, veterinary certification of non-releasability of rehabilitated wildlife); expand existing regulations but will not otherwise repeal or limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Meredith Longoria (512) 389-4410, e-mail: meredith.longoria@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation and authorizes the department to issue a permit to a qualified person to collect, hold, possess, display, transport, release, or propagate

protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter C.

§69.43. *Definitions.*

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

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

~~{(8) Release to the wild--Release of wildlife to an area where it is capable of leaving at will.}~~

~~(8) [(9)] Socialize--Using a captive animal to teach wild behaviors to juvenile animals of the same species.~~

~~(9) [(10)] Subpermittee--A person authorized by a permittee [permit] to conduct activities governed by this subchapter [only while under the supervisory responsibility of a permit holder].~~

~~(10) Wildlife--Protected wildlife, as defined by Parks and Wildlife Code, Chapter 43, Subchapter C.~~

~~{(11) Supervisory responsibility--The responsibility that a permit holder has to direct the actions of an individual under his or her control, and for which that supervisor accepted legal responsibility.}~~

~~{(12) Transportation--The transfer of captive protected wildlife from one permit holder to another, from an out-of-state source to an in-state permit holder, from an in-state permit holder to an out-of-state destination, from site of legal capture to holding, or to site of final disposition.}~~

~~{(13) Volunteer--An individual who works with permitted wildlife in the presence of the permit holder or subpermittee.}~~

§69.44. *General Provisions.*

(a) Activities authorized by a permit issued under this section shall be conducted ~~[made]~~ only by the permittee and/or subpermittees ~~[permittee(s) or subpermittee(s)]~~ named on the permit and only at a rehabilitation facility registered with the department via an electronic application designated by the department for that purpose, except for those activities necessary to retrieve, stabilize, and transport wildlife to a registered rehabilitation facility for further evaluation and treatment.

(b) A subpermittee shall conduct activities governed under a permit issued under this subchapter only at a rehabilitation facility registered with the department unless under the direct supervision of the permittee. ~~[Volunteers may assist in these activities, but only when in the presence of a permittee or subpermittee. A permittee utilizing volunteers shall keep on file at the permitted facility a signed and dated affidavit authorizing the status of each volunteer.]~~

(c) ~~[(b)]~~ Wildlife ~~[Protected wildlife]~~ held under the authority of a ~~[rehabilitation]~~ permit issued under this subchapter may not be sold, bartered, or exchanged for any consideration. A permit issued under this subchapter ~~[section]~~ shall not authorize a person, firm, or corporation to engage in the propagation or commercial sale of ~~[protected]~~ wildlife.

(d) Wildlife held under the authority of a permit issued under this subchapter shall not be commingled with domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife.

(e) ~~[(e)]~~ A permittee ~~[permit holder]~~ shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting or bonding.

~~(f) [(d)]~~ Except for permitted educational purposes, wildlife possessed under a rehabilitation [the] permit shall not come in contact with anyone other than the permittee and/or subpermittees ~~[permit holder, subpermittees, volunteers]~~, licensed veterinarians or the staff of licensed veterinarians.

~~(g) [(e)]~~ A permittee ~~[permit holder]~~ shall not allow the viewing, exhibit, or display to the public of animals possessed under a rehabilitation permit unless specifically authorized by permit provision.

~~(h) [(f)]~~ A permittee ~~[permit holder]~~ shall not conduct activities governed under this subchapter ~~[rehabilitation]~~ on the same property as a fur-bearing animal propagation facility or deer breeding facility unless specifically authorized in writing by the department. ~~[This restriction may be waived by the department on a case-by-case basis.]~~

~~(i) [(g)]~~ Non-releasable ~~[protected]~~ wildlife shall be euthanized except as provided by this subsection ~~[unless the permittee meets the criteria established in paragraph (1) or (2) of this subsection for the retention of nonreleasable wildlife].~~

(1) Permission to retain non-releasable wildlife may be granted only to permittees [rehabilitators] who have at least three years' experience as a permitted wildlife rehabilitator.

(2) ~~[(1)]~~ The department may permit the retention of non-releasable [nonreleasable] wildlife for approved educational, fostering, or socialization purposes, or for transfer to zoological, scientific, or educational permittees ~~[permit holders]~~. Requests must be made in writing to the department and no transfer shall take place until the department has approved the request. A request to retain non-releasable wildlife under this subsection shall include a statement from a licensed veterinarian that the animal is non-releasable and the reasons why the animal is non-releasable. The department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself.

~~{(2) Prior to December 31, 1997, the department may grant on a case-by-case basis, via letter of authorization, permission for permitted rehabilitators to retain nonreleasable wildlife.}~~

(j) ~~[(h)]~~ Permittees ~~[Permit holders]~~ possessing non-releasable raptors shall band the raptors with markers supplied by the department.

(k) All white-tailed or mule deer received by a permittee shall immediately be identified by the attachment to the pinna of either ear of:

(1) a Radio Frequency Identification Device (RFID) button tag approved by the department; and

(2) a "dangle" type tag bearing the unique identifier assigned to the deer by the department.

(3) The RFID tag required by this subsection must have an associated 15-digit animal identification number conforming to the 840 standards of the United States Department of Agriculture, which number shall be reported to the department via an electronic application designated by the department for that purpose within 24 hours of the tag being applied to the deer.

(4) The removal of a tag required by this subsection from a living white-tailed or mule deer is prohibited.

(5) A permittee shall report the mortality of any white-tailed or mule deer to the department within 24 hours of discovery via the electronic application specified by the department for that purpose.

(6) A transfer permit must be activated as prescribed by the department prior to the transfer of any white-tailed or mule deer from a wildlife rehabilitation facility. Not later than 48 hours following the completion of all activities authorized under a transfer permit, the permit shall be completed as prescribed by the department.

(l) ~~[(h)]~~ All medical treatment, including vaccinations, shall be performed in consultation with a licensed veterinarian and in accordance with all applicable laws regarding extra-label use of medications and biologicals.

(m) ~~[(j)]~~ Euthanized wildlife and wildlife that has died while under the care of a permittee shall be transferred within 72 hours to a person authorized by law to receive such wildlife or disposed of in a Type I landfill ~~[may be retained by the permittee or transferred to another permitted wildlife rehabilitator]~~. White-tailed and mule deer mortalities in individuals older than six months of age shall be tested for chronic wasting disease in accordance with the applicable provisions of §65.92 of this title (relating to CWD Testing).

(n) ~~[(k)]~~ This subchapter does not apply to department personnel, or transport by animal control officers~~;~~ or peace officers in the performance of official duties.

(o) ~~[(h)]~~ The department may temporarily waive any provision of this subchapter during a wildlife health crisis.

(p) The department may designate a manual process in lieu of any electronic application requirement of this subchapter if for whatever reason the electronic application is unavailable.

§69.45. Permit Required.

(a) No person may possess wildlife for purposes of rehabilitation unless the person possesses a valid permit issued under the provisions of this subchapter. ~~[No permit is required to rehabilitate nongame species for which there is no open season or possession limit, or for which there are no provisions by rule or statute that would otherwise restrict possession.]~~

(b) Except as otherwise provided under Chapter 65, Subchapter B, of this title (relating to Disease Detection and Response), licensed ~~[Licensed]~~ veterinarians may hold, possess, and transport ~~[protected]~~ wildlife to provide emergency medical care or stabilization care for periods of up to 48 hours, after which time the wildlife must be transferred to a permitted rehabilitator.

~~[(e)]~~ Subpermittees may possess protected wildlife for rehabilitation purposes provided they have in their possession a copy of the valid permit naming them as a subpermittee.]

(c) ~~[(d)]~~ No permittee shall change facility location or ~~[; consulting veterinarian, or subpermittees]~~ receive unauthorized species, or conduct unauthorized activities unless the permittee possesses an amended permit authorizing such activity.

(d) ~~[(e)]~~ Permits issued under this section may be issued for any period of time not exceeding three years from the date of issuance.

§69.46. Application for Permit.

(a) An applicant for a permit under this subchapter must be at least 18 years of age.

(b) ~~[(a)]~~ Applications shall be made on forms supplied or approved by the department~~;~~ and shall be submitted with the letters of recommendation required by §69.47 of this title (relating to Qualifications). Incomplete applications will not be processed.

(c) ~~[(b)]~~ Applications must be accompanied by ~~[evidence of one the following]~~:

(1) a copy of the certificate of completion of a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association within the preceding three years;

(2) a letter of recommendation from a licensed veterinarian and/or permitted wildlife rehabilitator with at least three years' experience as a permitted wildlife rehabilitator who has known the applicant for at least two years; and ~~[attendance at a national wildlife rehabilitation conference within the preceding three years;]~~

~~[(3)]~~ membership in a state or national wildlife rehabilitation organization; or

(3) ~~[(4)]~~ a test score of 100 ~~[80 or above]~~ on a department-administered wildlife rehabilitation examination.

(d) ~~[(e)]~~ Permits for the taking or holding of federally protected species shall not be valid unless the permittee ~~[permit holder]~~ also possesses a valid federal permit authorizing possession of those species.

(e) ~~[(4)]~~ Except for persons authorized to do so under the terms of ~~[holders of]~~ zoological permits, no person holding a permit authorizing the propagation for sale of ~~[protected]~~ wildlife shall be authorized to rehabilitate those species.

§69.47. Refusal of Permit Issuance or Renewal; Review [Qualifications].

~~[(a)]~~ Wildlife rehabilitation permits may be issued only to qualified individuals who:

~~[(1)]~~ are 18 years of age or older; and

~~[(2)]~~ have letters of recommendation from two persons who have known the applicant for at least two years. The letters of recommendation must be from:

~~[(A)]~~ conservation scientists or game wardens currently employed by the department;

~~[(B)]~~ licensed veterinarians; or

~~[(C)]~~ permitted wildlife rehabilitators.]

~~[(b)]~~ Evidence of certification by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association can be substituted for one of the required letters of recommendation.]

(a) ~~[(e)]~~ The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, or received deferred adjudication or been assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43 [88];

(2) - (3) (No change.)

(b) ~~[(d)]~~ The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo contendere* to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (a) ~~[(e)]~~ of this section.

(c) ~~[(e)]~~ The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(d) ~~[(f)]~~ The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(c) [(g)] An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(f) [(h)] An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

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

§69.48. *Permit Renewals.*

(a) (No change.)

(b) Renewal applications shall not be processed until the department has received all reports required by §69.52 of this title (relating to Reports and Recordkeeping) accompanied by evidence of at least one of the following:

(1) completion of a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association within the preceding three years;

(2) a current Wildlife Rehabilitator Certification provided by International Wildlife Rehabilitation Coalition; or

(3) attendance at a national wildlife rehabilitators conference within the preceding three years.

(c) The department may deny a renewal as provided in §69.47 of this title (relating to Refusal of Permit Issuance or Renewal; Review) [if the permittee has violated any of the provisions of the permit, regulations of the department, or federal or state wildlife laws].

§69.49. *General Facilities Standards.*

(a) All facilities shall be subject to inspections by the department. A first-time applicant's facilities shall be inspected by the department and no permit shall be issued until the facilities are determined to satisfy all of the applicable facilities standards of this subchapter.

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

(b) White-tailed deer and mule deer held under a permit issued under this subchapter shall be confined at all times within a department-approved enclosure (indoor, outdoor, or both) that is constructed in such a fashion as to prevent both escape and contact with other deer or susceptible species as defined in Chapter 65, Subchapter B, of this title (relating to Disease Detection and Response). The department will not authorize the rehabilitation of deer by a permittee if the permittee's facility is not in compliance with this subsection.

§69.50. *Transfers.*

(a) Except as provided by federal law, Chapter 65, Subchapter B, of this title, or a provision of state law, a [A wildlife rehabilitation] permit issued under this subchapter authorizes the permittee [permit holder] to transfer wildlife to:

(1) other wildlife rehabilitators legally permitted to hold that species in Texas; or [-]

(2) [Wildlife rehabilitators may transfer lawfully held live] wildlife [to] rehabilitators permitted in other states, provided a letter of authorization from the department has been obtained prior to the transfer.

(b) The transfer to or receipt of white-tailed or mule deer from another state is prohibited.

§69.51. *Release of Rehabilitated Wildlife.*

(a) (No change.)

(b) A permittee [permit holder] shall not release, or cause or allow the release of wildlife in such a manner or at such a location so

that the released animals are likely to become a nuisance, a disease threat or a depredation threat.

(c) Except as provided by subsection (e) of this section, [Wildlife] releases shall not be made in or to fenced or enclosed areas that prevent the animal from leaving at will.

(d) Wildlife [Protected wildlife] shall be released only to habitat appropriate for the species.

(e) No person may release or allow the release of white-tailed deer or mule deer held under the provisions of this subchapter unless:

(1) the deer are released within a site that is completely surrounded by a fence of at least seven feet in height and capable of retaining deer at all times under reasonable and ordinary circumstances;

(2) the owner of the release site has agreed in writing to be responsible for ensuring that the fence surrounding the release site is in compliance at all times with the provisions of paragraph (1) of this subsection; and

(3) the release site has been, prior to receiving deer under this subsection, registered with the department via an electronic application designated by the department for that purpose.

(f) [(e)] Permittees may not release wildlife on department property without the permission of the department.

(g) [(f)] A permittee commits an offense if the permittee releases or effects the release of wildlife held under the provisions of this subchapter [is] on private property without having [and fails to have] on their person the written permission of the landowner, lessee, or operator to be on that property.

(h) Nothing in this section shall be construed to exempt any person from any applicable provision of local, state, or federal law.

§69.52. *Reports and Recordkeeping.*

(a) Each permittee shall maintain, on a form provided or approved by the department, a daily log of all animals acquired or received for rehabilitation. The daily log shall, at a minimum, consist of the following:

(1) the species and sex of each animal acquired or received;

(2) the date and time that each animal was acquired or received;

(2) the name, address, phone number, and, if possible, an email address for each person from whom an animal is acquired or received;

(3) the approximate geographical location where each animal was found before being acquired or obtained; and

(4) the date and time of final disposition of each animal, to include method and location of disposal, for animals that are euthanized.

(b) A permittee [Permit holders] shall complete and submit an annual report on a form provided by the department. The report shall include the activities of all individuals listed on the permit.

(c) [(b)] Reports must be received by the department by January 15 of each year.

(d) [(e)] Copies of all reports shall be retained at the permitted facility and kept available for inspection by the department for a period of two years.

(e) The daily log required by this subchapter shall be retained at the permitted facility and kept available for inspection by the department for a period of two years from the last date of entry.

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 July 6, 2020.

TRD-202002754

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 16, 2020

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

34 TAC §3.34

The Comptroller of Public Accounts proposes the repeal of §3.34, concerning exemption of certain royalty interest from oil occupation taxes and regulation pipeline taxes. The comptroller repeals the existing §3.34 in order to propose the adoption of new §3.34 with significantly expanded content. The repeal of §3.34 will be effective as of the date the new §3.34 takes effect.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed repeal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed repeal would benefit the public by conforming with federal law. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed repeal would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the repeal to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2 (State Taxation).

The repeal implements Tax Code, Chapter 202 (Oil Production Tax).

§3.34. Exemption of Certain Royalty Interests from Oil Occupation Taxes and Regulation Pipeline Taxes.

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

Filed with the Office of the Secretary of State on July 2, 2020.

TRD-202002702

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: August 16, 2020

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



34 TAC §3.34

The Comptroller of Public Accounts proposes new §3.34, concerning exemption of governmental entities and two-year inactive wells. The new section replaces existing §3.34, concerning exemption of certain royalty interests from oil occupation taxes and regulation pipeline taxes, which the comptroller is proposing to repeal. New §3.34 implements Senate Bill 533, 86th Legislature, 2019, effective September 1, 2019, which amended Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive), regarding the severance tax exemption for oil and gas production from two-year inactive wells.

In subsection (a), the comptroller defines the terms "casinghead gas," "commission," and "hydrocarbons" using the definitions found in Tax Code, Chapter 201 (Gas Production Tax) and Chapter 202 (Oil Production Tax). The comptroller provides a definition for the term "two-year inactive well," deriving the language for this term from Tax Code, §202.056(a)(4). The language provides that a well can only be certified as a two-year inactive well on or after September 1, 2019.

In subsection (b), the comptroller outlines an exemption for certain entities, including the federal and Texas government and their subdivisions.

In subsection (c), the comptroller provides the title and language based on Tax Code, §202.156 (Tax Borne Ratably), which provides that the tax shall be borne ratably by all "interested parties." Interested parties are determined "without regard to title to the oil either before or after severance; and without regard to any arbitrary classification or nomenclature." See *Sheppard v. Stanolind Oil & Gas Co.*, 125 S.W.2d 643, 648 (Tex. Civ. App.--Austin 1939, writ ref'd).

In subsection (d), the comptroller provides information regarding two-year inactive wells, including: the comptroller's approval process for the exemption of a two-year inactive well in paragraph (1); the beginning date and duration of the exemption in paragraph (2); and the process to receive a tax credit for payments made at the full rate under the Tax Code in paragraph (3).

In subsection (e), the comptroller provides information regarding recompleted certified two-year inactive wells, including the duration of the exemption and the application process for the exemption.

In subsection (f), the comptroller provides the two-year inactive well exemption does not extend to the oil-field regulatory cleanup fee.

In subsection (g), the comptroller outlines penalties applicable to two-year inactive wells whose certification the Railroad Commission revoked and for which the taxpayer continues to claim the credit.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years that the rule is in effect, the proposed new rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

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

The comptroller proposes the new section under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 (State Taxation).

The new section implements Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive), regarding exemption for oil and gas from wells previously inactive.

§3.34. Exemption of Governmental Entities and Two-Year Inactive Wells.

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

(1) Casinghead gas--Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Commission--The Railroad Commission of Texas.

(3) Hydrocarbons--Any oil or gas produced from a well, including hydrocarbon production.

(4) Two-year inactive well--A well that has not produced oil or gas in more than one month in the two years preceding the date of application for severance tax exemption under this section. The term only includes a well certified by the commission on or after September 1, 2019, and does not include a well that is:

(A) part of an enhanced oil recovery project, as defined by Natural Resources Code, §89.002 (Definitions); or

(B) drilled but not completed and that does not have a record of hydrocarbon production reported to the commission.

(b) Exemption of certain entities. The federal government and its subdivisions and the State of Texas and its subdivisions are not subject to the oil production tax.

(1) Subdivisions of the federal government include, but are not limited to, the following:

(A) the Federal Land Bank;

(B) the Department of the Interior;

(C) the Bureau of Land Management; and

(D) the Army Corps of Engineers.

(2) Subdivisions of the State of Texas include, but are not limited to, the following:

(A) Texas cities, towns, and villages;

(B) Texas counties;

(C) Texas independent and common school districts;
and

(D) Texas public colleges and universities.

(c) Tax borne ratably. The tax shall be borne ratably by all nonexempt interested parties in proportion to their interests.

(d) Two-year inactive wells.

(1) To apply for the exemption for a two-year inactive well, taxpayers must submit to the comptroller a copy of the approved certification letter provided by the commission and a completed Texas Well Exemption Application (AP-217), or any successor to that form promulgated by the comptroller.

(2) The exemption for the two-year inactive well extends for five years beginning with the month following the date certified by the commission.

(3) If the tax is paid at the full rate provided by Tax Code, §202.052(a) (Rate of Tax) before the comptroller approves an application for an exemption provided for in this subsection (d) of this section, the operator is entitled to a credit against taxes imposed by Tax Code, §202.052 in an amount equal to the tax paid. To receive a credit, the operator must apply to the comptroller for the credit before the expiration of the applicable period for filing a tax refund claim under Tax Code, §111.104 (Refunds).

(e) Recompleted two-year inactive well. A two-year inactive well that is recompleted shall only receive the five-year exemption from the initial certification of the well. A taxpayer must file another Texas Well Exemption Application (AP-217), or any successor to that form promulgated by the comptroller, for the recompleted well identifying the original commission lease number when that well meets the requirements:

(1) the commission certifies the recompleted two-year inactive well;

(2) the commission assigns a new lease number for the recompleted well; and

(3) the American Petroleum Institute number for the well does not change.

(f) Oil-Field cleanup regulatory fee. The exemption provided by subsection (d) of this section does not extend to the oil-field cleanup regulatory fee.

(g) Penalty. On notice from the commission that the certification for a two-year inactive well has been revoked, the tax exemption shall not apply to oil or gas production sold after the date of notification. A person who claims the exemption is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption allowed by subsection (d) of this section after the certification for

a two-year inactive well is revoked. The amount of the penalty may not exceed the sum of:

(1) \$10,000; or

(2) the difference between the amount of taxes paid or attempted to be paid and the amount of taxes due.

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 July 2, 2020.

TRD-202002703

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: August 16, 2020

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



SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts proposes an amendment to §3.1202, concerning warning notice signs. The proposed amendment updates the warning notice sign size minimum requirements to match new warning notice signs provided by the comptroller.

The comptroller amends subsection (d)(2)(A) to include new minimum size requirements for warning signs. The comptroller reduces the minimum required size measurements from 14 to 11 inches in length.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by reducing the amount of material used for each sign. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

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

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the

comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, 161.084 (Warning Notice).

§3.1202. *Warning Notice Signs.*

(a) Warning notice signs. Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine must post a warning notice sign in a location that is conspicuous to all employees and customers and that is close to the cash register, check-out stand, or vending machine where cigarettes, e-cigarettes, or tobacco products may be purchased. The failure to display a sign as prescribed by this section is a Class C misdemeanor.

(b) Sign distribution. Upon request, the comptroller will provide the warning notice signs without charge to any person who sells cigarettes, e-cigarettes, or tobacco products, including distributors or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection. Requests for the warning notice signs may be made by calling the Comptroller of Public Accounts toll free at 1-800-862-2260, or by writing to the attention of the Account Maintenance Division, Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774-0100. In Austin, call (512) 463-3731. A request must include the number of signs needed, and the person and address to whom the signs are to be mailed.

(c) Alternate signs. Retailers, distributors, and wholesale dealers may develop their own warning notice signs provided the signs meet minimum size and design specifications, including wording and font size, described in subsection (d) of this section. A retailer, distributor, or wholesale dealer may submit a sample of its proposed sign for review to the address as noted in subsection (b) of this section.

(d) Sign design and minimum size requirements. The design, minimum size, and placement location of each sign are as follows.

(1) Design. Each sign must be designed according to the following:

(A) it must contain the following statutory language: "PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING 1-800-345-8647. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.";

(B) it must contain the following statutory language until September 1, 2022: "THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO WAS BORN ON OR BEFORE AUGUST 31, 2001."; and

(C) retailers must display the English version. The comptroller will make a Spanish version available. Both the Spanish and English versions may be posted.

(2) Size and placement. The sign is to be posted on or near:

(A) a cash register or check-out stand and must be no less than 8-1/2 inches wide by 11[14] inches in length. The font size for the statutory language that must appear on the sign must be no less than 14-point type. The mandatory warning notice sign must be conspicuous from each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased. If a retailer chooses, an additional warning notice sign, regardless of size, may be conspicuously placed on each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased; and

(B) a vending machine and must be no less than 3 inches wide by 7 inches in length. The font size for the statutory language that must appear on the sign must be no less than 10-point type.

(e) Effective date. Sellers of cigarettes and tobacco products must display the warning notice signs in the appropriate locations be-

ginning January 1, 1998. E-cigarette sellers must display the warning notice signs in the appropriate locations beginning October 1, 2015.

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 July 2, 2020.

TRD-202002701

William Hamner

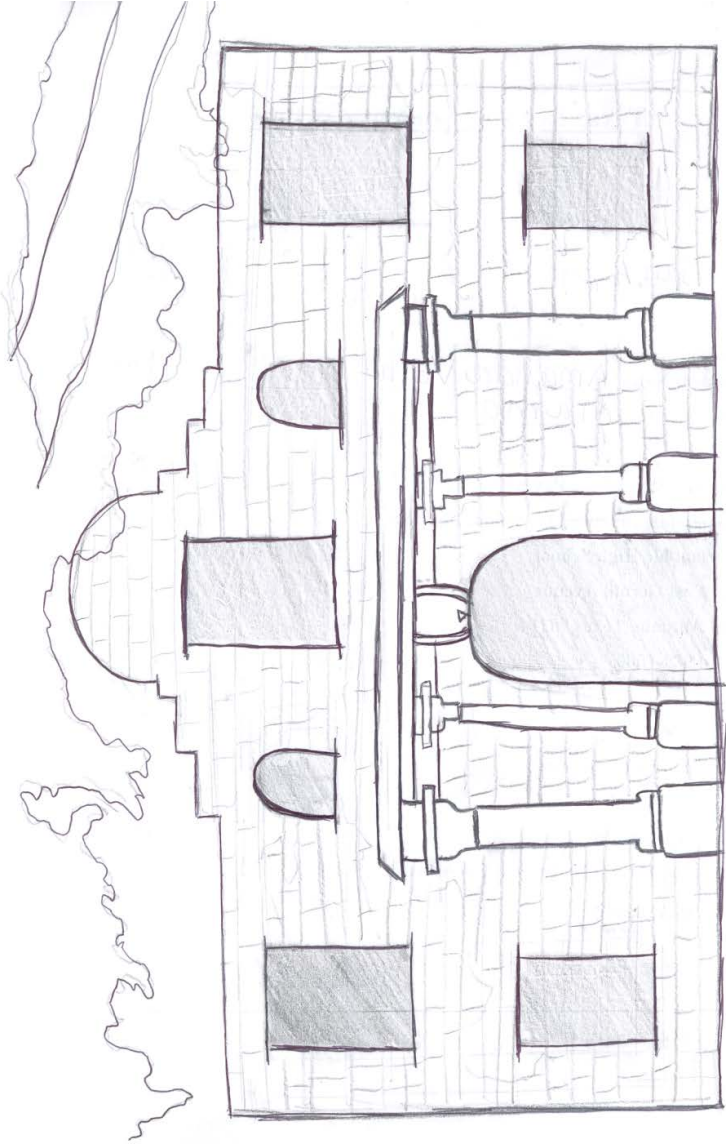
Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: August 16, 2020

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





WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

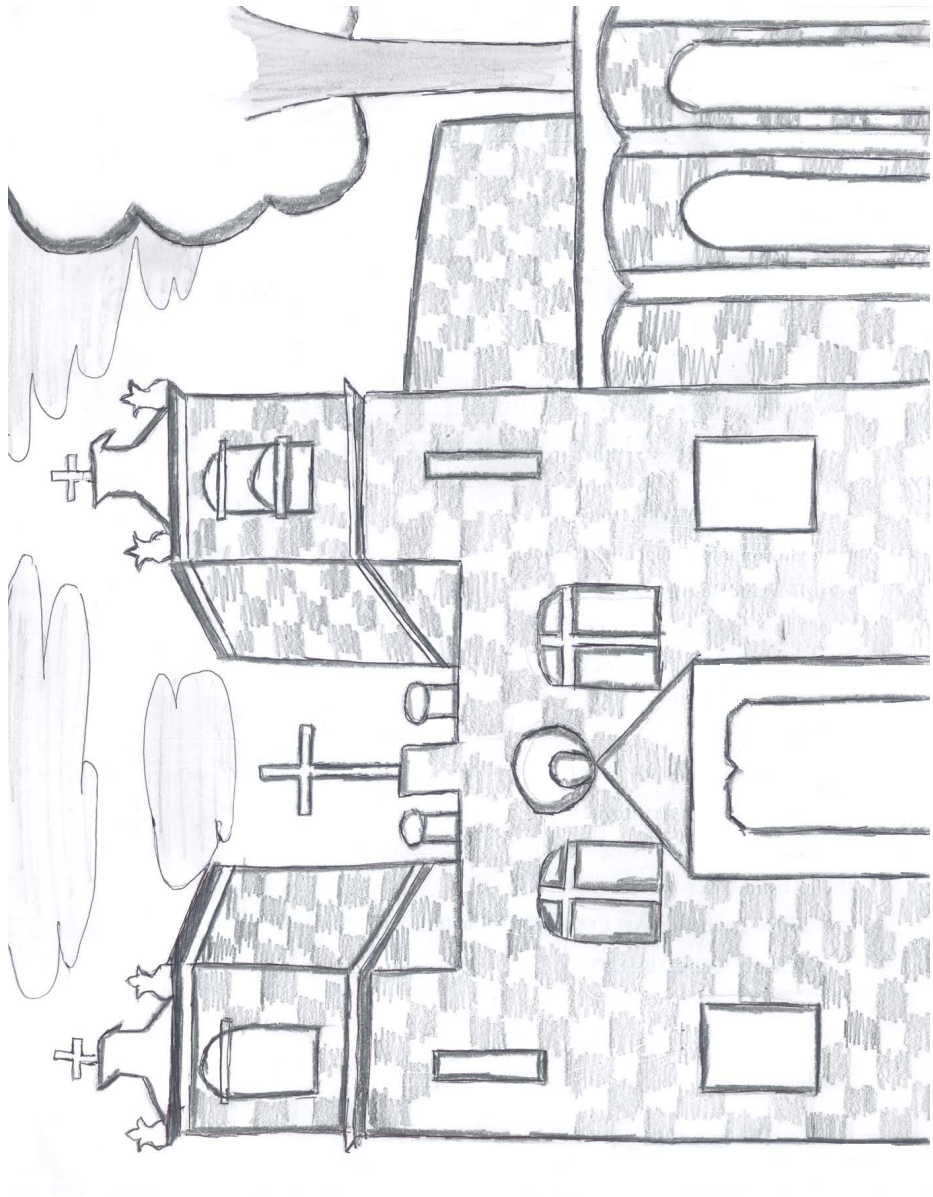
22 TAC §531.18

Proposed amended §531.18, published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7598), is with-

drawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on July 2, 2020.
TRD-202002728





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 377. CHILDREN'S ADVOCACY PROGRAMS

SUBCHAPTER C. STANDARDS OF OPERATION FOR LOCAL CHILDREN'S ADVOCACY CENTERS

1 TAC §§377.201, 377.203, 377.205, 377.207, 377.209, 377.211

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §377.201, concerning Purpose and Definitions; §377.203, concerning Legal Authorization, §377.205, concerning Applicability; §377.207, concerning Contract with Statewide Children's Advocacy Center Organization; §377.209, Contracts with Local Children's Advocacy Centers; and §377.211, concerning Operation of Local Children's Advocacy Center and Program. These rules are adopted without changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2958). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

Children's advocacy centers (CACs) were codified in statute under the Texas Family Code §§264.401-264.411 in 1995. At that time, Children's Advocacy Centers of Texas, Inc. (CACTX) was an administrative board for 13 CACs that were in existence. Since 1995, the number of CACs have grown to 72 CACs serving 210 of 254 counties in Texas. HHSC has contracted with CACTX as the statewide organization providing children's advocacy services since fiscal year 2016. Prior to transitioning to HHSC, the Office of the Attorney General contracted with CACTX to provide these services.

The adoption of the amendments reflect the changes Senate Bill 821, 86th Legislature, Regular Session, 2019, made to the Texas Family Code in relation to standards of operation for local children's advocacy centers. Additionally, the amendments will more clearly align the rules with current practices, standards, services, and operations of the statewide children's advocacy center organization and local CACs in Texas.

COMMENTS

The 31-day comment period ended June 8, 2020.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Family Code §264.409, which directs HHSC to contract with a statewide organization for the administration and oversight of child advocacy centers statewide.

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 July 2, 2020.

TRD-202002727

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: July 22, 2020

Proposal publication date: May 8, 2020

For further information, please call: (512) 206-4647

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.13

The Texas Historical Commission (Commission) adopts amendments to §16.13 of Chapter 16 (Title 13, Part 2 of the Texas Administrative Code), relating to Historic Sites. The amendments are adopted without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1095) as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division. The rule will not be republished.

The rule adds language listing the statutes and internal policies that establish THC control over these collections. Additionally, the rule outlines the requirements for final disposition of objects that have been removed from these collections following a formal deaccession process, including the sale of historic object collections. The need for this rule follows the passage of HB 1422 (2019), which amends Chapter 2175 of the Texas Government Code to include provisions related to the sale of deaccessioned historic object collections through the Texas Facilities Commission's (TFC) State Surplus Property program.

There were no comments received during the posting period.

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

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

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 June 30, 2020.

TRD-202002683

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: July 20, 2020

Proposal publication date: February 21, 2020

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



CHAPTER 19. TEXAS MAIN STREET PROGRAM

13 TAC §19.3

The Texas Historical Commission ("THC") adopts an amendment to §19.3 of Chapter 19 (Title 13, Part II of the Texas Administrative Code) relating to the Texas Main Street Program ("the program"). The amendment is adopted without changes to the proposed text published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1526). The THC received no comments in response to the March 6, 2020 publication.

The THC's Texas Main Street Program is the agency's responsibility under Section 442.014 of the Texas Government Code. The Texas Main Street Program utilizes a national model established by the National Trust for Historic Preservation and the agency has been the state coordinating program for more than thirty-five years. Administration of the Program must comply with the requirements of the national Main Street America program and those set by the Texas Legislature. Local communities in Texas wishing to participate in the Program must apply

and participate under the auspices of the THC. Currently, eighty-nine communities with populations from approximately 1,900 to 325,000 are designated in the Program statewide.

The purpose of the Texas Main Street Program is to assist communities in the preservation and revitalization of their historic downtowns and commercial neighborhood districts. The THC provides training, technical, and organizational assistance to the local participants.

The amendment to Chapter 19 clarifies existing practices. The amendment defines that the participating community is responsible for identifying the specific geographic area within which the Program services are available, subject to approval by the state program staff. The amendment insures that the agency retains the ability to allocate state resources effectively.

STATUTORY AUTHORITY. Amendments to Sections 19.3 of Chapter 19 (Title 13, Part II of the Texas Administrative Code) relating to the Program is adopted under Section 442.005(q) of the Texas Government Code, which provides the THC with the authority to promulgate rules for the effective administration of its programs under the chapter, and under Section 442.014 of the Texas Government Code which provides THC with the authority to administer the Texas Main Street Program.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Section 442.014 of the Texas Government Code. No other statutes, articles, or codes are affected by this amendment.

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 June 30, 2020.

TRD-202002684

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: July 20, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 24. RESTRICTED CULTURAL RESOURCE INFORMATION

13 TAC §24.17

The Texas Historical Commission (Commission) adopts an amendment to Title 13 of the Texas Administrative Code, Part 2, Chapter 24, §24.17 relating to Restricted Cultural Resource Information. The amendment is adopted without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1096). The rule will not be republished.

The amendment corrects a numbering error in the citation referencing the definition of professional archeologist, or principal investigator, found in 13 TAC §26. The previous citation found in §24.17(a)(2) referenced the definition of professional archeologist or principal investigator as defined by §26.5. By adoption of this amendment, the correct citation is §26.4.

There were no comments received during the posting period.

The amendment is adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. The adopted amendment implements §§191.091 and 191.092 of the Texas Natural Resources Code.

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

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 June 30, 2020.

TRD-202002685

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: July 20, 2020

Proposal publication date: February 21, 2020

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



CHAPTER 26. PRACTICE AND PROCEDURE SUBCHAPTER C. ARCHEOLOGY

13 TAC §§26.13, 26.15, 26.17

The Texas Historical Commission (Commission) adopts amendments to §§26.13, 26.15, and 26.17, TAC, Title 13, Part 2, Chapter 26, Subchapter C, relating to archeological permits and decisions concerning destructive analysis of human remains. The amendments are adopted without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1098). The rules will not be republished.

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

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

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

There were no comments received during the posting period.

The amendments to Rules §§26.13, 26.15, and 26.17 (Title 13, Part II of the Texas Administrative Code) are adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas. Natural Resources Code §191.054 allows the Commission to issue permits for the survey and discovery, excavation, demolition, or restoration of, or the conduct of scientific or educational

studies at, in, or on landmarks. The amendments are further authorized by Texas Government Code §442.005(q), which grants the Commission the power to adopt rules to administer Chapter 442 of the Texas Government Code. The adopted amendments implement §§191.054 and 191.055 of the Texas Natural Resources Code.

No other statutes, articles, or codes are affected by these amendments.

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 June 30, 2020.

TRD-202002679

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: July 20, 2020

Proposal publication date: February 21, 2020

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



CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §29.5

The Texas Historical Commission (Commission) adopts amendments to Title 13 of the Texas Administrative Code, Part 2, Chapter 29, §29.5 relating to Disposition of State Associated Collections. The amendments are adopted without changes to the proposed text as published in the February 21, 2020 issue of the *Texas Register* (45 TexReg 1102). The rule will not be republished.

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

There were no comments received during the posting period.

The amendment to §29.5 of Chapter 29 (Title 13, Part 2 of the Texas Administrative Code) relating to the Disposition of State Associated Collections is adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas located at Chapter 191 of the Texas Natural Resources Code. Natural Resources Code §191.055 grants the Commission supervisory authority with respect to permits issued under §§191.054 and 191.053 to ensure that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved. The amendment is further authorized by Texas Government Code §442.005(q), which grants the Commission authority to adopt rules to carry out its duties, including duties delegated in the Antiquities Code of Texas. The adopted amendments implement §§191.091 and 191.092 of the Texas Natural Resources Code.

No other statutes, articles, or codes are affected by these amendments.

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 June 30, 2020.

TRD-202002686

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: July 20, 2020

Proposal publication date: February 21, 2020

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



PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.13

The State Preservation Board (SPB) adopts amendments to §111.13, relating to Exhibitions in the Capitol and Capitol Extension, with changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3406). The rule will be republished.

Explanation and Justification for Rules

The amendments to §111.13 are designed to make clear that all future exhibits in the exhibit areas of the Capitol and Capitol Extension will be adopted as government speech. The amendments change the heading's use of the term "exhibition" to "exhibit" to reflect the word usage throughout the amended rule; other similar typographical changes are made for consistent usage. They are not intended to be substantive changes unless described herein. The definition of State Official Sponsor (§111.13(a)(4)) provides that a qualified elected official may sponsor an exhibit proposed by his or her constituents, and that he or she is responsible for ensuring that the exhibit complies with all applicable requirements. Section 111.13(b) is added to explicitly adopt exhibits displayed in the exhibit areas of the Capitol and Capitol Extension as government speech and to require that any such exhibit identify the State Official Sponsor and indicate the Board's approval. Because any exhibit will become government speech for the duration of its display, the current fee to obtain access to the exhibit areas of the Capitol and Capitol Extension is removed from what is now §111.13(c). Exhibitors retain ownership of their exhibit and are responsible for costs of assembling, displaying, and removing the exhibit as well as (if necessary) providing additional security for an exhibit. The criteria for consideration (§111.13(d)) are amended to make explicit that because all displays constitute the government's speech, the Board retains discretion to reject any exhibit. To be considered, all content of the exhibit (including any text) must be clearly disclosed to the Board, and the State Official Sponsor must make a written statement that he or she has reviewed that content and concluded that it is consistent with the applicable requirements and suitable for adoption as government speech. Consistent with the adoption of exhibits as government speech,

the Board retains discretion to make any changes it deems appropriate to any exhibit. Finally, the amendments clarify that the scheduling and duration of the display of an exhibit (§111.13(e)) are at the discretion of the Board.

The rule is adopted with a change from what was proposed in that some of the proposed language for the subsection (a)(3) definition of "public purpose" was removed, specifically the language that reads "exhibits that are inconsistent with the historic presence of the Capitol and Capitol Extension, including exhibits which are sensationalistic, gruesome or obscene. It also does not include activities which depict subjects of a contemporary political controversy." In addition, the proposed deletion of the term "activities" from that definition was not adopted.

The amendments incorporate the Board's consideration of the comments received in writing and during public hearing. The change made at adoption in §111.13(a)(3) affect no new subject matter or additional parties than those who were previously given notice though the publication of the proposed rule; therefore, the rule will not be republished in the *Texas Register* for additional comment.

Comments and Board Response:

The Board received 220 written comments regarding the proposed rule amendments on the following issues.

Many comments stated that speech at the Capitol should remain "unencumbered and uncensored." Texas Home School Coalition Association (THSC) voiced this concern and suggests the amendments as written, with the added language to the definition of public purpose, would impact home schooling negatively, perhaps affecting their annual event at Capitol Days. The Board disagrees that the amendments will have this effect. Nevertheless, the Board adopts the proposed amendments to §111.13(a)(3) with much of the proposed new language removed. As adopted, the definition of public purpose remains unchanged, except to remove the word "morals" and to add the words "and Capitol Extension" at the end of the sentence.

Certain comments, THSC, Texas Right to Life (TRL), and the ACLU (American Civil Liberties Union), took issue with the proposed additional language regarding public purpose, which follows: "*This does not include exhibits that are inconsistent with the historic presence of the Capitol and Capitol Extension, including exhibits which are sensationalistic, gruesome or obscene. It also does not include activities which depict subjects of a contemporary political controversy.*" Commenters suggested that this language is vague and overly restrictive and questioned who would determine whether a proposed exhibit met one of the disqualifying criteria, suggesting the criteria are too subjective. Commenters also expressed concern about how the meaning of the criteria could change over time. The Board understands this interpretation and intends for the definition to be clear and easy for the Board to apply consistently. Therefore, the Board removes from the adopted rule amendments certain language of (§111.13 (a)(3)) that was the subject of that concern.

In that same vein, the Board has removed the word "morals" from the definition. Certain comments suggested that removing the word "morals" from the public purpose definition takes away the public's ability to decide what is "moral." The Board respectfully disagrees. As adopted, the effect of the rule is to clarify that all exhibits displayed through the exhibit program will be adopted as government speech while on display. The public purpose requirement merely clarifies what exhibits the Board will consider

adopting as government speech in the three particular exhibit spaces in the Capitol and Capitol Extension.

TRL and others commented against the amendments contending that they might unconstitutionally limit free speech, including the speech of pro-life groups. Included within the free-speech comments received were concerns that the Board would shut down displays that may offend or make some people uncomfortable; severely restrict the content allowed for exhibits on display at the Texas Capitol; and infringe on the ability for people to openly discuss and debate things that fall under political controversy. The Board recognizes the sacrosanct nature of First Amendment rights and respectfully disagrees. The practice of allowing exhibits in the exhibit spaces in the Capitol and Capitol Extension has historically been limited, has never permitted many forms of commercial or political activity, and has most often been used to allow Texans--particularly schoolchildren--to display artwork for the enjoyment of their fellow Texans. The Board has for many years limited the space available space for such exhibits to three spaces in the Capitol and Capitol Extension, and even that space may be reduced such as during building renovations. The rule makes clear who is responsible for these displays. The amendments, which apply equally to all exhibits, do not impact Texans' ability to exercise their First Amendment rights. Nevertheless, in an abundance of caution and because of the importance of ensuring the rule cannot be misinterpreted as having any impact on Texans' fundamental rights, as indicated above, the Board has adopted the rule with changes, to leave out much of the language that was proposed in §111.13 (a)(3).

Comment was also received expressing the sentiment that no exhibit should be censored from the Capitol, and that limiting exhibits censors public dialogue. The Board respectfully disagrees. Texas is a diverse state, and those who pass through the Capitol have many differing views. In keeping with the historic significance of the Capitol and the solemnity of the work conducted inside, it is the Board's view that all exhibits displayed on behalf of the government in these highly trafficked areas should be subject to reasonable regulation that is equitably applied.

A frequent concern commenters expressed was that the amendments violate free speech under the First Amendment. As stated above, the amendments apply to all exhibits equally and only clarify rules and restrictions that the Board is charged with enforcing. The SPB is an agency established to, among other things, "preserve, maintain, and restore the Capitol, the General Land Office Building, their contents, and their grounds." TEX. GOV'T CODE §§443.001, 443.007(a)(1). The Board must "approve all changes to the buildings and their grounds," and "may adopt rules concerning the buildings, their contents, and their grounds." *Id.* §443.007(a)(4); (b). While the Board has profound respect for the right to free expression in our society, this statutory authority is focused on maintaining these buildings as the seat of State government and maintaining the Capitol, in particular, as an appropriate environment for the functions of the Legislature to be carried out. The Board supports the rights of all Texans to visit the Capitol, to engage with lawmakers, and to have robust, fulsome debate about important matters of policy both inside and outside the Capitol building. Continuing to set aside the three exhibit spaces in the Capitol for only those exhibits that meet the specified criteria has no impact on the scope of public debate or efforts of Texans to influence their elected representatives.

Finally, comments from the public and the ACLU stated that exhibits should be the people's speech and not that of the State.

The Board understands the concern with the term "government speech"; however, it rejects the notion that government speech prohibits free speech. The right to express ideas and discuss differing opinions is unquestioned in our State. The Capitol belongs to all Texans, but not every Texan will agree as to what should be displayed in the Capitol. To ensure the exhibit spaces are not a "free for all" or a distraction from the important work that takes place in the Capitol and Capitol Extension, the State is regulating those spaces under the government speech doctrine. An individual passing through the Capitol will likely and reasonably identify with the State the contents displayed in the exhibit spaces. The halls of the Capitol buildings play an important role in defining the identity that a State projects to its own residents and to the outside world. The State has authority to directly control the selection and content of exhibits, in several ways. First, applications have not ever been considered unless accompanied by a signature of sponsorship from a State official. 13 Texas Administrative Code §111.13(a)(4). After recommendation from a qualified sponsor, if an exhibit is approved, the exhibitor signs a liability release and acknowledges the State's unilateral authority to make changes to the exhibit. The law also makes clear that the placement of exhibits of a public purpose within the Capitol is an exercise of the State's sovereign powers. The Supreme Court has held that a government entity has the right to speak for itself and is entitled to say what it wishes, and to select the views that it wants to express.

A public hearing was requested by both TRL and THSC and was held, via webinar teleconference, on June 23, 2020. Three people representing themselves and three groups--TRL, THSC, and Protect Texas Fragile Kids (PTFK)--attended to provide comment. TRL requested that the amendments be entirely withdrawn, stating that as written, the amendments set a dangerous policy. TRL focused its comments on the definition of public purpose, specifically the two sentences the Board has removed at adoption. THSC restated its position that Texas home school families were not in favor of the proposed amendments to the public purpose definition, stating that the language was vague and would impact free speech. Additionally, THSC stated concern that all exhibits would now be considered government speech. PTFK commented that the proposed definition of public purpose was onerous and could limit beneficial and educational exhibits. PTFK expressed concern that the definition, as written, could keep grassroots organizations out of the Capitol, and that all exhibits would be considered government speech. Additional concern was expressed that the amendments as proposed were ripe for misuse or abuse in the future. The Board has responded to similar concerns expressed by other parties as described above.

Statutory Authority:

These amendments are adopted under Texas Government Code §443.007, which authorizes the SPB to adopt rules concerning the buildings, their contents, and their grounds; and Texas Government Code §443.018, which authorizes the SPB to adopt rules that regulate the actions of visitors in the Capitol or on the grounds of the Capitol including rules that prohibit persons from attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the SPB.

No other statutes, articles, or codes are affected by the adopted amendments.

§111.13. Exhibits in the Capitol and Capitol Extension.

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

(1) Exhibit--Any display of artwork, including paintings, sculptures, arts and crafts; photographs; public service and general interest presentations; and historical displays.

(2) Public areas of the Capitol and Capitol Extension--The hallways, entrances, vestibules, stairways, light courts, rotundas, and other areas adjacent to or near the rotunda.

(3) Public purpose--The promotion of the public health, education, safety, general welfare, security, and prosperity of all the inhabitants or residents within the state, the sovereign powers of which are exercised to promote such public purpose or public business. The chief test of what constitutes a public purpose is that the public generally must have a direct interest in the purpose and the community at large is to be benefitted. This does not include activities which promote a specific viewpoint or issue and could be considered lobbying. Political rallies, receptions, and campaign activities are prohibited in the public areas of the Capitol and Capitol Extension.

(4) State Official Sponsor--The Governor, the Lieutenant Governor, the Speaker of the Texas House of Representatives, a Texas Senator, or member of the Texas House of Representatives may sponsor exhibits proposed by his or her constituents. The State Official Sponsor is responsible for determining that an exhibit meets all applicable rules. Potential exhibitors are advised to consult with their proposed Sponsor regarding whether additional rules apply.

(b) Any exhibit approved and scheduled pursuant to this section by the office of the State Preservation Board is hereby adopted as government speech, and shall be accompanied by a statement identifying the State Official Sponsor and indicating the approval of the office of the State Preservation Board.

(c) Fees and Costs. No fee is required from persons or entities that use the Capitol and Capitol Extension for an exhibit. However, the State Preservation Board may require any exhibitor to cover the direct and indirect costs to the state of the exhibit, including the costs of labor, materials, and utilities directly or indirectly attributable to the exhibit, including costs of assembling, displaying and removing exhibits.

(d) Criteria for Exhibit Consideration.

(1) Exhibits may be approved and scheduled by the office of the State Preservation Board.

(2) Exhibits will not be considered for display unless they serve a public purpose as defined in subsection (a)(3) of this section.

(3) To be considered, a request must be accompanied by:

(A) a detailed description of the exhibit, including dimensions of the space required, how the exhibit will be displayed, and every word to be conveyed by the exhibit;

(B) a clear photograph of the entire exhibit, preferably as it will be displayed, or a scale drawing if a photograph is not available;

(C) a brief statement of the purpose of the exhibit; and

(D) statement of a State Official Sponsor as described in subsection (a)(4) of this section that the exhibit meets the criteria and is appropriate for adoption as government speech.

(4) Incomplete requests will not be considered.

(5) Exhibits must be tastefully exhibited. The office of the State Preservation Board reserves the right to require the exhibitor to make any changes to the exhibit.

(6) Exhibit space will be assigned at the discretion of the office of the State Preservation Board, considering factors such as the size, scope, and design of the exhibit. Exhibits will not be approved for display in the Capitol rotunda in order to maintain its historic presence.

(7) To be considered for display, an exhibit must be free-standing. Art and photographic exhibits must be secured to tripods, backdrops, or freestanding displays. Exhibits may not:

(A) hang from or attach to walls or railings;

(B) obstruct entrances;

(C) interrupt traffic flow through the building;

(D) damage walls, woodwork, or floors;

(E) obstruct the view or access to fire-fighting equipment or fire alarm pull stations; or

(F) involve the use of any flammable, hazardous, or odorous chemicals or materials, torches, or other open-flame illuminating devices or fires.

(8) Exhibits will not be considered for display as government speech in the Capitol and Capitol Extension if they:

(A) feature one individual's artwork for the purpose of commercially advertising that person's artwork;

(B) promote a commercial enterprise;

(C) have no public purpose; or

(D) have an illegal purpose.

(9) If other than routine security provided by Capitol police is needed for the exhibit, the exhibitor will bear such costs. The State of Texas, the State Preservation Board, or any employee of the State Preservation Board shall not be held liable in case of damage or loss to an exhibit while it is on display in the Capitol and Capitol Extension.

(e) Scheduling exhibits.

(1) Because exhibits in the Capitol and Capitol Extension are government speech, the State Preservation Board retains discretion regarding how long to display an exhibit. Exhibits typically are displayed for up to 5 working days.

(2) The office of the State Preservation Board may shorten or extend the display time for exhibits.

(3) No more than one exhibit will be approved for display on the same day in a designated area of the Capitol and Capitol Extension.

(4) A written request using State Preservation Board forms to display an exhibit must be received by the office of the State Preservation Board no later than two weeks prior to the first day of the time being requested.

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 June 30, 2020.
TRD-202002687

◆ ◆ ◆
TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

**SUBCHAPTER BB. COMMISSIONER'S
RULES ON REPORTING REQUIREMENTS**

19 TAC §61.1027

The Texas Education Agency (TEA) adopts an amendment to §61.1027, concerning the report on the number of disadvantaged students. The amendment is adopted without changes to the proposed text as published in the April 10, 2020 issue of the *Texas Register* (45 TexReg 2402) and will not be republished. The adopted amendment implements changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by incorporating additional methods to determine a student's eligibility for state compensatory education funding.

REASONED JUSTIFICATION: TEA adopted §61.1027 to establish requirements for reporting the number of disadvantaged students attending campuses not participating in the National School Lunch Program (NSLP) to derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment. The rule was adopted in accordance with Texas Education Code (TEC), §42.152, as that statute existed prior to HB 3, 86th Texas Legislature, 2019. HB 3 transferred, redesignated, and amended TEC, §42.152, to §48.104. This transfer and amendment included the addition of direct certification and direct verification as methods of determining a student's eligibility for state compensatory education funding. The adopted amendment to §61.1027 incorporates the changes made by HB 3 as follows.

The section title changed from "Report on the Number of Disadvantaged Students" to "Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment."

New subsection (a) establishes that a student who meets the income requirements for eligibility under the NSLP is eligible to be counted to generate compensatory education allotment funding under TEC, §48.104. The adopted amendment also specifies the approved methods to consider student eligibility pursuant to TEC, §48.104, including direct certification and verification.

New subsection (b) clarifies the alternative method to calculate formula transition grant funding pursuant to TEC, §48.277, and 19 TAC §61.1011, Formula Transition Grant. The adoption maintains existing provisions relating to application and reporting procedures.

New subsection (c) clarifies requirements relating to the use of the Community Eligibility Provision to determine student eligibility.

Subsections (c) and (d) were re-lettered accordingly.

New subsection (f) establishes the data source upon which the compensatory education allotment will be based.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 10, 2020, and ended May 26, 2020. Following is a summary of the public comment received and the corresponding response.

Comment: The Texas Public Charter Schools Association (TPCSA) commented that using the fall Public Education Information Management System (PEIMS) submission data to calculate the compensatory education allotment prevents a school's allotment from changing if the school receives more economically disadvantaged students in the spring. TPCSA recommended that the agency allow schools to report their compensatory education allotment average weight for economically disadvantaged students enrolled in the spring each six weeks when they report their PEIMS data instead of funding schools for the entire year using the fall PEIMS submission. TPCSA stated that this would ensure schools receive the funding they need to educate newly enrolled students with greater needs.

Agency Response: The agency disagrees and has maintained language in the rule as proposed. Pursuant to TEC, §48.104, a district is entitled to an annual allotment equal to the basic allotment multiplied by the weight assigned to the student's census block group under TEC, §48.104(d). Calculation of the annual compensatory education allotment requires data for student counts to be reported in the fall PEIMS submission and not attendance reported by six weeks or in the summer PEIMS submission.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §5.001(4), which states that "educationally disadvantaged" means eligible to participate in the national free or reduced-price lunch program established under 42 United States Code (USC), §§1751 et seq; TEC, §48.277(b)(4), as added by HB 3, 86th Texas Legislature, 2019, which states that if a school district or open-enrollment charter school receives a waiver relating to eligibility requirements for the national free or reduced-price lunch program under 42 USC, §§1751 et seq., the commissioner shall use the numbers of educationally disadvantaged students on which the district's or school's entitlement to compensatory education funds was based for the school year before the school year in which the district or school received the waiver, adjusted for estimated enrollment growth; TEC, §48.104(a) and (b), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied by 2.41. For each student who is educationally disadvantaged and resides in an economically disadvantaged census block group as determined by the commissioner under TEC, §48.104(c), a district is entitled to an annual allotment equal to the basic allotment multiplied by the weight assigned to the student's census block group under TEC, §48.104(d); and former TEC, §42.152, which stated that for each student who is educationally disadvantaged or who is a student who does not have a disability and resides in a residential placement facility in a district in

which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant. TEC, §42.152(b), stated that for purposes of §42.152, the number of educationally disadvantaged students is determined: (1) by averaging the best six months' numbers of students eligible for enrollment in the national school lunch program of free or reduced-price lunches for the preceding school year; or (2) in the manner provided by commissioner rule. TEC, §42.152(b-1), stated that a student receiving a full-time virtual education through the state virtual school network may be included in determining the number of educationally disadvantaged students under §42.152(b) if the school district submits to the commissioner a plan detailing the enhanced services that will be provided to the student and the commissioner approves the plan.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §5.001(4); §48.104, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019; §48.277, as added by HB 3, 86th Texas Legislature, 2019; and former §42.152, as that section existed prior to HB 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.

Filed with the Office of the Secretary of State on July 1, 2020.

TRD-202002696

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 21, 2020

Proposal publication date: April 10, 2020

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



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 17, 2020, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning the accountability rating system. The amendment is adopted with changes to the proposed text as published in the May 1, 2020 issue of the *Texas Register* (45 TexReg 2809) and will be republished. The amendment adopts applicable excerpts of the *2020 Accountability Manual*.

REASONED JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for

rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2020 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2020 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for school districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered are updated to align with 2020 accountability and present tense is applied throughout.

Chapter 1 gives an overview of the entire accountability system. The description of the Accountability Policy Advisory Committee was updated to note that the committee makes its own recommendations to address policy issues. The description of a *Not Rated* rating was moved from the Single-Campus Districts section to the Rating Labels section and expanded upon. The label *Not Rated: Declared State of Disaster* was added to indicate that due to extraordinary public health and safety circumstances and the closure of schools during the state's testing window inhibiting the ability of the state to accurately measure district and campus performance, the 2020 rating label *Not Rated: Declared State of Disaster* was issued to all districts and campuses. The school types chart was updated to reflect numbers for 2020.

Chapter 2 describes the Student Achievement domain. The section describing the inclusion of substitute assessments was updated to state that results from fall 2019 and spring 2020 are not included. Unschooled asylee, refugee, and students with interrupted formal education (SIFE) inclusion language was updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. Clarifying language regarding rounding within the State of Texas Assessment of Academic Readiness (STAAR®) component was added. The list of College, Career, and Military Readiness (CCMR) indicators was reorganized to align with other Performance Reporting products. The list of career and technical education courses aligned with an industry-based certification (IBC) was updated in response to the expansion of the IBC list.

Chapter 3 describes the School Progress domain. Language referencing House Bill 22, 85th Texas Legislature, 2017, was removed. Unschooled asylee, refugee, and SIFE inclusion language was updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The language describing small numbers analysis for the Academic Growth domain was updated to indicate that three years are used. The section describing the inclusion of substitute assessments was updated to state that results from fall 2019 and spring 2020 are not included. A sentence reiterating that English learners in their second year in U.S. schools are included was removed, as it is redundant.

Chapter 4 describes the Closing the Gaps domain. The construction of this domain is based on the need to align to the

language of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA). Clarifying language was added to the minimum size section, noting that a district or campus must meet minimum size for at least five indicators in the Academic Achievement component to be evaluated. Clarifying language was added to the Current and Former Special Education Students and Current and Monitored English Learners sections regarding the sources used to identify students as such. Unschooling, asylee, refugee, and SIFE inclusion language was updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The section describing the inclusion of substitute assessments was updated to state that results from fall 2019 and spring 2020 are not included. A sentence describing the minimum number of indicators needed to be evaluated was added to each section describing the minimum size criteria. The language describing small numbers analysis for the Academic Growth domain was updated to indicate that three years are used. Language was added to note changes to the graduation rate methodology if the amendment submitted to the U.S. Department of Education (USDE) is approved. Texas English Language Proficiency Assessment System (TELPAS) Alternate was added to the English Language Proficiency component descriptions as well as a shift to use 2018 TELPAS composite ratings if 2019 composite ratings are not available. The list of CCMR indicators was reorganized to align with other Performance Reporting products. Clarifying language was added to note that only summer 2019 substitute assessments are included as participants. Additional language was added to the middle school example calculation to illustrate how to proportionally distribute component weights.

Chapter 5 describes how the overall ratings are calculated. Language was added to note that the following provision does not apply if the triggering campus is an alternative education accountability campus with a domain or overall rating of *D*. A district may not receive an overall or domain rating of *A* if the district includes any campus with a corresponding overall or domain rating of *D* or *F*. In this case, the highest scaled score a district can receive for the overall or in the corresponding domain is an 89. The formatting was updated for the campus School Progress, Part B: Relative Performance Lookup Tables.

Chapter 6 describes distinction designations. Clarifying language was added stating that a campus may earn a distinction based on a sole indicator other than attendance. An indicator that evaluates Grade 8 Algebra I end-of-course performance was added to the mathematics distinction section. The Top 25 Percent distinction methodology language was updated to state the use of the raw score rather than the scaled score.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. The Pairing section was updated to state that traditional campuses may not be paired with AEA campuses. A section regarding magnet campuses and programs was added to detail the attribution of assessment results. Clarifying language was added to the AEA of choice description. Language describing the AEA registration process was revised to note that if a campus was registered in 2019 using the at-risk safeguard and it does not meet the at-risk enrollment criterion in 2020, the campus would not be eligible for AEA and would not be re-registered in 2020. Language was added stating that campuses that were not registered in 2019 but meet eligibility requirements for AEA in 2020 are automatically registered along with the requirement for a district to rescind the registration if

they do not wish for the campus to be evaluated under AEA provisions. The number of at-risk criteria was updated from 13 to 14 to reflect statutory changes.

Chapter 8 describes the process for appealing ratings. A deadline of June 5, 2020, for TELPAS rescore requests and a deadline of June 19, 2020, for STAAR® rescore requests was added. Additionally, rescore requests submitted after the deadline will not be considered during the appeals process. Language was added stating that all preliminary ratings are subject to change due to an investigation or an appeal. The *Local Accountability System Manual* was changed to *Local Accountability System Guide*. A paragraph describing special program campuses was added to the Special Circumstance Appeals section, and a paragraph describing rescoring was removed. Clarifying language was added to note that distinction designations are not reprocessed for districts and campuses that receive a granted appeal for an *A-D* rating. The example of a satisfactory appeal was updated to reflect a satisfactory appeal recently received. A sentence was added to state that certain appeal requests may lead to audits and/or investigations.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The reference to House Bill 22, 85th Texas Legislature, 2017, was removed. Language was added stating that due to the lack of 2020 accountability ratings, the campuses identified for Public Education Grant (PEG) based on 2019 ratings will remain on the 2021-2022 PEG List. The Campus Intervention Requirements under the TEC, Chapter 39A, section was revised to reference TEC, Chapter 39A, rather than TEC, §39A.101, and to address campuses with a *D* rating. The Actions Required Due to Low Ratings or Low Accreditation Status sections was updated to include *D* ratings along with *F* ratings. Language was added to the Campus Intervention Requirements section and the Actions Required Due to Low Ratings section noting that when a district or campus receives a rating of *Not Rated*, *Not Rated: Declared State of Disaster*, or *Not Rated: Data Integrity Issues*, the district or campus shall continue to implement the previously ordered sanctions and interventions. If a campus has been ordered to prepare a turnaround plan and then receives a rating of *Not Rated*, *Not Rated: Declared State of Disaster*, or *Not Rated: Data Integrity Issues*, that campus is strongly encouraged, but not required, to implement the approved turnaround plan. Language was revised to clarify the policy for updating campus identification numbers.

Chapter 10 provides information on the federally required identification of schools for improvement. Language and charts were revised to detail changes to additional targeted support, targeted support and improvement, and comprehensive support and improvement identification methodology if the submitted ESSA amendment is approved. Language was revised to note that all students, former education, continuously enrolled, and non-continuously enrolled student groups are not evaluated for additional targeted and targeted support and improvement. For targeted support and improvement and additional targeted support sections, minimum size requirement language was removed for the all students group, as it is not evaluated. Language regarding the exit criteria for comprehensive support and improvement was revised to clarify that campuses must have an improved Closing the Gaps domain letter grade by the end of the second year.

Chapter 11 describes local accountability systems. Language was added to clarify that local accountability plans may vary by campus type and by school group but must apply equally to all campuses by type and group. Language noting that an independent panel consisting of representatives from current participating districts would participate in the review process was removed. The *Local Accountability System Manual* was replaced with the *Local Accountability System Guide*. References to a "what if" rating were removed. Language indicating that districts must submit scaled scores for each component was added.

Changes were made to the manual since published as proposed. The adopted manual includes the following changes either to provide clarification or in response to public comment.

Chapter 1 was revised in response to public comment to clarify that due to extraordinary public health and safety circumstances and the closure of schools during the state's testing window inhibiting the ability of the state to accurately measure district and campus performance, the 2020 rating label *Not Rated: Declared State of Disaster* is issued to all districts and campuses.

Chapter 4 was updated in response to public comment to indicate that all districts and campuses are labeled *Not Rated: Declared State of Disaster* for 2020, and, therefore, TELPAS and TELPAS Alternate results are not evaluated.

Chapter 5 was revised in response to public comment to clarify that in 2020, all districts and campuses are labeled *Not Rated: Declared State of Disaster* overall and for each domain and that the remainder of Chapter 5 describes how A-F ratings for overall and domain performance would have been applied to districts and campuses if ratings had been assigned.

Chapter 7 was updated to clarify that the pairing process is not necessary in 2020 because districts and campuses are labeled *Not Rated: Declared State of Disaster*. Additionally, Chapter 7 was updated to state that the 2020 registration process occurred May 15-June 1, 2020, and that the final list of AEA campuses and AEA charter campuses will be posted on the TEA website in June 2020. Lastly, language was added in response to public comment to clarify that CCMR and graduation rate outcomes are to be assigned to campuses of instruction, not campuses of origin. The types of programs and campuses to which the rule applies was also expanded to include Pathways in Technology Early College High Schools (P-TECHs), schools of choice, academies, and other similar programs.

Chapter 8 was revised in response to public comment to clarify that while districts and charter schools may appeal for any reason, the accountability system framework limits the likelihood that a single indicator or measure will result in a reduced rating. Chapter 8 was also revised to clarify that due to circumstances caused by the COVID-19 pandemic, all districts and campuses are labeled *Not Rated: Declared State of Disaster* for 2020 and that notwithstanding any other provision of the chapter, the 2020 rating label cannot be appealed.

Chapter 10 was updated to state that notwithstanding any other provision of the chapter, campuses identified for comprehensive support and improvement, targeted support and improvement, and additional targeted support in 2019 maintain that label and interventions for the 2020-2021 school year under the provisions on the Elementary and Secondary Education Act, as amended by the ESSA, waiver approved by the USDE on March 30, 2020.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 1, 2020, and

ended June 1, 2020. Following is a summary of the comments received and corresponding responses.

Comment: Lead4ward, Lexington Independent School District (ISD), Somerville ISD, and 36 district staff members requested additional clarity in Chapter 1 and Chapter 5 on the application of the *Not Rated: Declared State of Disaster* label. The Fast Growth School Coalition and the Texas School Alliance (TSA) proposed that the opening paragraph of Chapter 1 be updated with clarifying language from the To the Administrator Addressed letter released on April 2, 2020.

Agency Response: The agency agrees to add clarifying language. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify that all districts and campuses will be assigned a *Not Rated: Declared State of Disaster* label for 2020; however, the specific language from the April 2, 2020 letter was not used.

Comment: The Fast Growth School Coalition and TSA commented in support of Texas's request to amend the graduation rate methodology as described in Texas's ESSA plan and requested that if the amendment is approved, the table on page 57 be updated to reflect the amendment waiver language shown on page 47. TSA also recommended that if the amendment is denied, the agency should either remove the condition to "exceed the previous year by at least a tenth of a percent" and award credit in this component based on the 90% target or modify this condition to award credit when the student group increases by at least a tenth of a percent or reaches the long-term state target of 94%.

Agency Response: The agency disagrees as a response to the ESSA amendment has yet to be received.

Comment: The Fast Growth School Coalition and TSA proposed setting alternate targets for alternative education campuses that serve as dropout recovery schools.

Agency Response: The agency disagrees. Currently the state's ESSA plan does not differentiate targets by campus type. As such, TEA does not have the authority to update Figure: 19 TAC §97.1001(b) with the commenter's proposed changes. This change would require an amendment to the state's ESSA plan.

Comment: The Fast Growth School Coalition and TSA proposed aligning the new Algebra I by Grade 8 Performance indicator evaluated in the mathematics distinction designation with other indicators by requiring Masters Grade Level achievement for credit.

Agency Response: The agency disagrees. The indicator is credited based on the Meets Grade Level standard in response to stakeholder feedback.

Comment: The Fast Growth School Coalition commented in support of the new language addressing the proper assessment result attribution for students attending magnet programs and campuses.

Agency Response: The agency agrees.

Comment: Five parents, one community member, one district staff member, one higher education counselor, and two individuals commented in support of the new language addressing the proper assessment result attribution for students attending magnet programs and campuses but requested that the language also address graduation; CCMR; and programs and campuses similar to magnets. One district staff member, one community member, two parents, one higher education counselor, and two individuals also proposed language clarifying whether the new

language relates to assignment of class rank for purposes of scholarships and/or tuition waivers related to the "Highest Ranking Graduate" (TEC, §54.301) and the "Automatic College Admission" (TEC, §51.803).

Agency Response: The agency agrees in part. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify that the rule applies to graduation, CCMR, and other specialized programs and campuses such as, but not limited to, P-TECHs, schools of choice, and academies. The portion of the comment regarding class rank and college admissions is outside the scope of the proposed rulemaking. For further information about TEC, §54.301 and §51.803, please contact the Texas Higher Education Coordinating Board.

Comment: Fort Bend ISD commented in opposition to the new language addressing the proper assessment result attribution for students attending magnet programs and campuses.

Agency Response: The agency disagrees. Academic accountability ratings are intended to evaluate outcomes for students at the district or campus for which they are assigned and receive instruction.

Comment: One parent proposed that graduation type codes 04 and 05 be replaced with codes 34 and 35 in the Graduate with Completed Individualized Education Program (IEP) and Workforce Readiness indicator evaluated in CCMR components.

Agency Response: The agency disagrees. Graduation type codes 04 and 05 are included based on stakeholder feedback and indicate workforce readiness. The graduation type plans included are inclusive of students who may take longer than four years to graduate.

Comment: One parent proposed the removal of the Recommended High School Plan and Distinguished Achievement Plan from the Graduate Under an Advanced Degree Plan and be Identified as a Current Special Education Student indicator evaluated in CCMR components.

Agency Response: The agency disagrees. The graduation type plans included are inclusive of students who may take longer than four years to graduate.

Comment: Texans for Special Education Reform and one parent proposed that students receiving special education services be evaluated in the same manner as other students by removing the two CCMR indicators specific to special education and setting equivalent targets for all student groups in the Closing the Gaps domain. Additionally, Disability Rights Texas and Texans for Special Education Reform requested the removal of the minimum number of indicators requirement in the Closing the Gaps domain.

Agency Response: The agency disagrees. The Closing the Gaps domain targets were set during negotiations with the USDE during the state's ESSA plan approval. The first draft of Texas's plan included the same targets for each student group. As the baseline data reflected some groups would have much higher gains to make while other groups may have already exceeded those targets, the USDE requested individualized targets for each student group based on actual statewide average. Additionally, the two indicators referenced are included based on stakeholder feedback with the intent to recognize CCMR for students receiving special education services that graduate under advanced degree plans or complete an IEP with workforce readiness. Lastly, the minimum number of indicators in the Closing the Gaps domain is not new for 2020 and was

established to ensure that the Closing the Gaps domain rating is reflective of the overall performance of the district or campus rather than allow performance of a small subset of results to disproportionately affect outcomes for a district or campus.

Comment: One district staff member and TSA proposed extending the phase-out of the half-point CCMR credit to 2022 accountability ratings.

Agency Response: As this comment pertains to future accountability ratings, it is outside the scope of the proposed rulemaking and should be addressed in next year's manual.

Comment: One district staff member proposed weighting the Closing the Gaps domain components for AEA middle schools as they are weighted for non-AEA middle schools or maintaining the current weights but reversing the substitution rules so that Growth is substituted for CCMR and the STAAR® component is substituted for Graduation Rate.

Agency Response: The agency disagrees. Currently, the state's ESSA plan does not differentiate AEA high schools and AEA middle schools. As such, TEA does not have the authority to update Figure: 19 TAC §97.1001(b) with the commenter's proposed changes. This change would require an amendment to the state's ESSA plan.

Comment: One district staff member and TSA proposed using graduation rate scaling methodology that considers school size.

Agency Response: The agency disagrees. School size is not a factor in the scaling formula for any component of the current accountability system. Scaling formulas were established using statewide data from all school sizes.

Comment: One district staff member and TSA proposed changing the Appeals Process language from "...a single indicator or measure will result in an *F* rating" to "a reduced rating."

Agency Response: The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated with the commenter's proposed language.

Comment: One district staff member proposed revising the Issues Unfavorable for Appeal language from "a newcomer center designed specifically to serve" to "a campus serving a high concentration of." TSA recommended expanding the phrase "newcomer center" to "newcomer center and/or campuses with 10 percent or more of their enrolled students identified as asylee/refugee/SIFE students."

Agency Response: The agency disagrees. "A high concentration of" is subjective in nature, and research would need to be conducted to establish a meaningful threshold before making such a change.

Comment: One district staff member and TSA commented in support of the removal of the All Students group from groups used to identify campuses for targeted support and improvement and additional targeted support.

Agency Response: The agency agrees.

Comment: Seven district staff members proposed to amend the language regarding the inclusion of TELPAS and TELPAS Alternate to indicate that TELPAS and TELPAS Alternate will not be measured for any accountability purposes for the 2019-2020 or 2020-2021 school year.

Agency Response: The agency agrees in part. At adoption, Figure: 19 TAC §97.1001(b) was updated to indicate that all dis-

tricts and campuses are labeled *Not Rated: Declared State of Disaster* for 2020, and, therefore, TELPAS and TELPAS Alternate are not evaluated. As the second portion of the comment pertains to future accountability ratings, it is outside the scope of the proposed rulemaking and should be addressed in next year's manual.

Comment: The Fast Growth School Coalition recommended including an explanation as to why crisis codes are being collected.

Agency Response: The crisis codes are not used for 2020 accountability. This comment is, therefore, outside the scope of the proposed rulemaking.

Comment: TSA recommended the repeal of Step 10 from Chapter 5 to align the ratings calculations with legislative intent until such time as lawmakers decide to make changes.

Agency Response: The agency disagrees. This step is one of many additional steps (such as the better of School Progress, Part A or Part B) adopted under commissioner rule. This step clarifies that if a district/campus has not met standards in three of four areas, it is not meeting standards overall. TEA has determined that this step is fair and appropriate, especially given the "better of the better of" used in the first two domains and the additional provision for the Student Achievement domain outcome.

Comment: TSA recommended retaining the phrase "independent review panel consisting of representatives from current LAS districts" to align the accountability manual with statute until such time as lawmakers decide to make changes in future accountability manuals.

Agency Response: As this comment pertains to future accountability, it is outside the scope of the proposed rulemaking and should be addressed in next year's manual.

Comment: TSA recommended removing "D" from the Campus Number Tracking in the section in Chapter 1 to align the accountability manual with statute until such time as lawmakers decide to make changes.

Agency Response: The agency disagrees. The TEA School Improvement Division provides support to campuses with "D" ratings as is currently required by statute.

Comment: TSA proposed that the agency issue "hold-harmless," "not-rated," or "report only" accountability ratings for the 2020-2021 school year.

Agency Response: As this comment pertains to future accountability, it is outside the scope of the proposed rulemaking and should be addressed in next year's manual.

Comment: TSA recommended removing "D" from the Actions Required Due to Low Ratings or Low Accreditation Status section in Chapter 9 to align the accountability manual with statute until such time as lawmakers decide to make changes.

Agency Response: The agency disagrees. The TEA School Improvement Division provides support to campuses with "D" ratings as is currently required by statute.

Comment: TSA recommended returning to the state's long-time standard of including unschooled asylees, refugees, and students with interrupted formal education beginning in their sixth year of enrollment in U.S. schools for the Student Achievement, School Progress, Part A: Academic Growth and School Progress, Part B: Relative Performance domain calculations.

Agency Response: The agency disagrees. This change was made in response to a USDE program review finding and brings the state into compliance with federal accountability requirements under ESSA.

Comment: TSA requested the agency include a historical timeline in the appendix that outlines the significant changes that have been made to the assessment and accountability system since 2011.

Agency Response: As this comment pertains to appendices, which are not adopted in Figure: 19 TAC §97.1001(b), it is outside the scope of the proposed rulemaking. The recommendation will be considered for future appendices.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(3)(L).

§97.1001. *Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official

Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2020 are based upon specific criteria and calculations, which are described in excerpted sections of the *2020 Accountability Manual* provided in this subsection. Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on July 1, 2020.

TRD-202002697

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 21, 2020

Proposal publication date: May 1, 2020

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



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012, §150.1013

The Texas Education Agency (TEA) adopts new §150.1012 and §150.1013, concerning teacher appraisal. The new rules are adopted with changes to the proposed text as published in the April 24, 2020 issue of the *Texas Register* (45 TexReg 2635) and will be republished. The adopted new rules implement Texas Education Code (TEC), §21.3521 and §48.112, by establishing rules for teacher designation.

REASONED JUSTIFICATION: House Bill (HB) 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which established a local optional teacher designation system, and TEC, §48.112, which established a teacher incentive allotment. Adopted new §150.1012 and §150.1013 implement the new statutes by specifying the requirements for school districts and charter schools to implement local teacher designation systems and the requirements for teachers with certification by the National Board for

Professional Teaching Standards to be designated as recognized.

Following is a description of adopted new §150.1012 and §150.1013.

§150.1012. Local Optional Teacher Designation System

Adopted new subsection (a) defines terms used in the section. The subsection also establishes fees for teacher incentive allotment teacher designation and system renewal, as allowable under TEC, §21.3521(i).

Based on public comment, a change was made at adoption to §150.1012(a)(1)(C) to include reference to TEC, §5.001, to ensure alignment of the definition of educator.

Based on public comment, a change was made at adoption to the definition of *rural* in §150.1012(a)(1)(J) to include a campus within a school district with fewer than 5,000 enrolled students that is categorized as a "non-metropolitan: stable" or "non-metropolitan: fast growing" district type by TEA.

Based on public comment, a change was made at adoption to §150.1012(a)(1)(L) to replace the term "standards-aligned" with the phrase "aligned to the standards of the course" for clarity.

Adopted new subsection (b) specifies the eligibility requirements for teachers to receive designations under an approved local optional teacher designation system and generate teacher incentive allotment funds for designation.

Based on public comment, §150.1012(b)(1)(B) has been revised at adoption to clarify the eligible role codes for teachers to earn or receive designations. In addition, a correction was made to reference the Texas Education Data Standards (TEDS) rather than the Public Education Information Management System (PEIMS).

Adopted new subsection (c) outlines the application and approval requirements for school districts to be approved to designate teachers through a local teacher designation system.

Based on public comment, a change was made at adoption to §150.1012(c)(1)(B) to specify that TEA shall permit certain applicants to resubmit their applications. The change from "may" to "shall" will ensure standardization of the application process.

Based on public comment, a change was made at adoption to §150.1012(c)(2) to replace the term "teacher group" with the phrase "eligible teaching assignment."

Based on public comment, changes were made at adoption to §150.1012(c)(2)(A)(ii)(I)-(III) to replace the term "standards-aligned" with the phrase "aligned to the standards of the course" for clarity.

Adopted new subsection (d) addresses the process for districts to be approved to expand or amend their local designation systems.

Based on public comment, a change was made at adoption to §150.1012(d)(1) to clarify that school districts must apply for approval of new eligible teaching assignments with previously unapproved student growth or teacher observation components, new student growth components, or new teacher observation components. Also in response to public comment, a change was made at adoption to §150.1012(d)(2) to specify that amendments for other application components will be due at the time of annual submission.

Adopted new subsection (e) specifies the monitoring and program evaluation process for approved local designation systems, which includes an annual data collection.

Based on public comment, a change was made at adoption to §150.1012(e)(2) to add that school districts must submit to TEA an implementation plan related to annual surveys administered to teachers, campus principals, and human resources personnel. Also in response to public comment, language was added to clarify that the annual surveys are developed by TEA.

Adopted new subsection (f) outlines the reasons a teacher's designation may be revoked or a district's approval to designate teachers through their local designation system may be revoked.

Adopted new subsection (g) establishes how a school district must use the funds received through the teacher incentive allotment.

Based on public comment, a change was made at adoption to §150.1012(g)(1)(B) to add that school districts are eligible to earn the base allotment for each designated teacher assigned to campuses with fewer than 20 students, juvenile justice alternative education program (JJAEP) campuses, disciplinary alternative education program (DAEP) campuses, and residential facilities. This change will ensure stability and predictability of annual allotments at those campus types.

Based on public comment, §150.1012(g)(1)(C) has been revised at adoption to correctly reference TEDS rather than PEIMS.

§150.1013. National Board for Professional Teaching Standards

Adopted new subsection (a) defines terms used in the section.

Adopted new subsection (b) specifies the requirements for teachers to be eligible for designation.

Based on public comment, changes were made at adoption to §150.1013(b)(1)(A), (2)(A), and (6)(A) to remove the cross reference to §150.1012(b)(1)(A) and instead include the allowable types of teacher certifications.

Based on public comment, §150.1013(b)(6)(B) has been revised at adoption to clarify the eligible role code.

Adopted new subsection (c) establishes the process for school districts to be reimbursed for fees paid to the National Board for Professional Teaching Standards. If National Board fees were paid by a teacher, the district must establish a process to ensure the teacher is reimbursed prior to the district being reimbursed by TEA.

Adopted new subsection (d) addresses the use of funds received through the teacher incentive allotment.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 24, 2020, and ended May 26, 2020. Following is a summary of the comments received and corresponding responses.

Comment: Whitesboro Independent School District (ISD) and Brooks County ISD expressed concern about the equitability of the definition of rural schools.

Agency Response: The agency disagrees that the proposed definition of *rural* was inequitable. The proposed rule implemented the definition in TEC, §48.112(a)(1), and also included additional schools labeled as rural by TEA and/or The United States Census Bureau. However, in response to other comments, the definition of *rural* was modified at adoption to include

school districts categorized by TEA as non-metropolitan: stable and non-metropolitan: fast growing.

Comment: Good Reason Houston, Frisco ISD, Denton ISD, Keller ISD, the Association of Texas Professional Educators (ATPE), and one individual expressed concern about the designation fee and suggested reducing the fee or imposing a fee cap.

Agency Response: The agency disagrees. TEC, §21.3521(i), allows the agency to adopt fees to implement the approval of district designation systems. The agency considers the fee amount to be reasonable.

Comment: Frisco ISD, Denton ISD, and Keller ISD expressed concern about the receipt of the allotment after district payout to teachers.

Agency Response: The agency disagrees. TEC, §48.112(i)(1)(A), requires that districts utilize the allotment received to provide compensation to teachers employed at the campus at which the teacher for whom the district received the allotment is employed. For subsequent payouts, it is recommended that a district only pay teachers based on designations after receiving official notice that its local designation system has been fully approved, thus ensuring the district will receive an allotment to support funds already dispersed to teachers.

Comment: Frisco ISD, Denton ISD, and Keller ISD expressed concern about DAEP campuses receiving the school district's average point value and suggested using the average point value of students currently enrolled at a DAEP.

Agency Response: The agency disagrees. DAEP campuses receiving the school district's average point value will ensure stability and predictability of annual allotments at those campuses.

Comment: The Texas Classroom Teachers Association (TCTA) noted that the term "standards-aligned" was not defined in §150.1012(a)(1)(L).

Agency Response: The agency agrees and has modified §150.1012(a)(1)(L) at adoption to replace the term "standards-aligned" with the phrase "aligned to the standards of the course."

Comment: TCTA noted that the standards established under TEC, §21.3521, should be defined in §150.1012(c)(1)(B).

Agency Response: The agency disagrees and has determined it is sufficient to include a reference to TEC, §21.3521, rather than include the standards found in the statute.

Comment: TCTA noted that the phrase "each teacher group" needs to be defined in §150.1012(c)(2).

Agency Response: The agency agrees that clarification is needed. Section 150.1012(c)(2) was revised at adoption to replace the phrase "teacher group" with the phrase "eligible teaching assignment."

Comment: TCTA noted that the phrase "calibration, congruence, and review of teacher observation data" was not defined in §150.1012(c)(2)(A).

Agency Response: The agency disagrees that the phrase needs to be defined. The definitions include normed terms that need not be defined in rule to clarify the application process.

Comment: TCTA noted that proposed §150.1012(c)(2)(A)(i)(II) would conflict with TEC, §26.009, regarding parental consent for videotaping.

Agency Response: The agency disagrees. TEC, §21.3521(h), allows the agency to collect information necessary to implement the provisions in the statute. Per the statute, information otherwise confidential remains confidential and is not subject to Texas Government Code, Chapter 552.

Comment: TCTA noted that the term "standards-aligned" was not defined in §150.1012(c)(2)(A)(ii)(I)-(III).

Agency Response: The agency agrees and has revised §150.1012(c)(2)(A)(ii)(I)-(III) at adoption to replace the term "standards-aligned" with the phrase "aligned to the standards of the course."

Comment: TCTA noted that the term "eligible teaching assignments" in §150.1012(c)(2)(C) and (d)(1) are in conflict with eligible teachers.

Agency Response: The agency disagrees. The eligible teaching assignments are defined by the district submitting a local optional designation system, and the eligibility requirements ensure that current teachers are receiving the designation and subsequently generating the allotment.

Comment: TCTA noted that proposed §150.1012(c)(2) would not be workable for teachers of special student populations and recommended the requirements be workable for all teachers.

Agency Response: The agency disagrees. The rule reflects TEC, §21.3521(b)(2), and references multiple forms of possible measures of student growth.

Comment: TCTA and Educate Texas suggested that §150.1012(g)(1)(A)(i) include reference to the 90%/10% spending requirement.

Agency Response: The agency disagrees that the proposed rule requires modification. Section 150.1012(g)(1)(A)(i) specifies that at least 90% of each allotment received must be spent on compensation of teachers, and §150.1012(g)(2) references TEC, §48.112, which identifies how funds must be used.

Comment: TCTA suggested additional rule text to clarify that the allotment will be generated for the employing district of the designated teacher.

Agency Response: The agency disagrees that the additional language needs to be included in rule since TEC, §48.112(c), states that the district where the classroom teacher with a teacher designation is employed will receive the allotment.

Comment: TCTA expressed support for §150.1013(c)(2).

Agency Response: The agency agrees that this provision will ensure teachers receive appropriate, timely reimbursement from their districts.

Comment: TCTA expressed concern that the rules do not comply with the Administrative Procedure Act due to references to information outside the rules.

Agency Response: The agency disagrees. The requirements of the proposed rules are authorized by the Texas Education Code and Texas Government Code, Chapter 2001, Subchapter B.

Comment: A Texas parent asked if teachers would still be able to file appeals for current appraisals.

Agency Response: This comment is outside the scope of the proposed rulemaking.

Comment: An individual asked about future funding of National Board teachers.

Agency Response: This comment is outside the scope of the proposed rulemaking.

Comment: ATPE, Good Reason Houston, and an individual expressed concern for §150.1012(f)(2)(E) and (3)(E), which state that approval of local optional designation systems and approval of individual teacher designations are voidable at the discretion of the commissioner.

Agency Response: The agency disagrees. The proposed rule reflects the agency's authority under TEC, §21.3521(f) and (j).

Comment: The National Board for Professional Teaching Standards (NBPTS) and seven individuals expressed support for §150.1013.

Agency Response: The agency agrees and is implementing TEC, §21.3521(c).

Comment: NBPTS and four individuals expressed concern that specialist roles would not be eligible for designations.

Agency Response: The agency disagrees that specialist roles are eligible for designations. The current eligibility requirements are in line with TEC, §48.112(c), which states that classroom teachers are eligible to generate an allotment.

Comment: One individual expressed concern that the spending requirements did not require a certain amount be spent on the designated teacher's compensation.

Agency Response: The agency disagrees. Section 150.1012(g)(2) specifies that school districts that receive teacher incentive allotment funding must comply with TEC, §48.112. TEC, §48.112(i)(1)(A) identifies how funds must be used.

Comment: One individual expressed concern that National Board teachers were not receiving the fee reimbursement directly.

Agency Response: The agency disagrees. Section 150.1013 is implementing TEC, §48.112(i)(1)(B), which specifies that school districts must use allotment funds for costs associated with implementing TEC, §21.3521, including efforts to support teachers in obtaining designations.

Comment: TASB expressed concern that school districts with fewer than 5,000 enrolled students categorized as non-metropolitan: stable or non-metropolitan: fast growing were not included in the definition of *rural*.

Agency Response: The agency agrees and has revised §150.1012(a)(1)(J) at adoption to include school districts categorized by TEA as non-metropolitan: stable and non-metropolitan: fast growing in the definition of *rural*.

Comment: TASB expressed concern about the stability of annual allotments at small campuses, JJAEP campuses, DAEP campuses, and residential facilities.

Agency Response: The agency agrees that clarification is needed and has revised §150.1012(g)(1)(B) at adoption to calculate teacher designations at small campuses, JJAEP campuses, DAEP campuses, and residential facilities at the district average point value.

Comment: TASB expressed concern about the clarity of §150.1012(g)(1)(A)(i) relating to how the allotment should be spent.

Agency Response: The agency disagrees that the rule requires clarification. The rule is clear that the allotment must be spent on prior year placements.

Comment: TASB expressed concern about the clarity of §150.1012(g)(1)(B) and the terms "central administration" and "zero-enrollment campus."

Agency Response: The agency disagrees that the rule requires clarification. The rule includes normed terms that need not be defined in rule.

Comment: Best in Class, TASB, and ATPE expressed concern for clarity around the eligible role code.

Agency Response: The agency agrees that clarification is needed and has revised §150.1012(b)(1)(B) and §150.1013(b)(6)(B) at adoption to include corresponding class roles.

Comment: The NBPTS and two individuals expressed concern that the description of active Texas certification was referencing the definition in §150.1012.

Agency Response: The agency agrees and has revised §150.1013(b)(1)(A), (2)(A), and (6)(A) at adoption to remove the cross reference to §150.1012(b)(1)(A) and instead include the allowable types of teacher certifications.

Comment: San Antonio ISD expressed concern about the amendment and application process for districts seeking phase-in local designation system approval.

Agency Response: The agency agrees and has revised §150.1012(d)(1) and (2) at adoption. Section 150.1012(d)(1) was modified to clarify that school districts must apply for approval of new eligible teaching assignments with previously unapproved student growth or teacher observation components, new student growth components, or new teacher observation components. Section 150.1012(d)(2) was modified to specify that amendments for other application components will be due at the time of annual submission.

Comment: The Texas State Teachers Association expressed concern about the applicability of proposed §150.1012(c)(2)(B) to assessments not adopted under TEC, §39.023.

Agency Response: The agency disagrees. The proposed rule is applicable to other types of assessments that measure student growth, including portfolios, student learning objectives, and teacher- and district-created assessments.

Comment: Best in Class and North East ISD expressed concern that the proposed rules did not contain that the fee found in §150.1012(a)(2)(A) was reimbursable upon approval.

Agency Response: The agency disagrees that the rule requires clarification since TEC, §48.112(g), states that a district is entitled to receive an increased allotment in the amount necessary for reimbursement for any fees paid under TEC, §21.3521.

Comment: North East ISD expressed concern that districts should be given more time to resubmit incomplete applications in §150.1012(c)(1)(A).

Agency Response: The agency disagrees and considers the resubmission timeline for incomplete applications to be reasonable.

Comment: North East ISD expressed concern that the annual surveys should be standardized in §150.1012(e)(2).

Agency Response: The agency agrees and has revised §150.1012(e)(2) at adoption to state that the annual surveys are developed by TEA.

Comment: Educate Texas encouraged clarity around §150.1012(c)(1)(D) and eligible teaching assignments.

Agency Response: The agency disagrees and has determined that the rule is clear.

Comment: Educate Texas encouraged clarity around §150.1012(d)(1) and starting dates of systems.

Agency Response: The agency disagrees that the rule requires clarification. New systems will apply using the designated application window.

Comment: Educate Texas encouraged clarity around §150.1012(c)(2)(A)(ii) and teachers in multiple subject areas.

Agency Response: The agency disagrees that the rule requires clarification. The student growth measure collected is at the discretion of the local education agency.

Comment: Educate Texas encouraged clarity around §150.1012(e)(2) regarding the distribution of the annual surveys.

Agency Response: The agency agrees and has revised §150.1012(e)(2) at adoption to state that the annual surveys are developed by TEA.

Comment: Educate Texas asked if districts would be required to report how they distribute funds.

Agency Response: The agency provides the following clarification. The annual reporting requirements are found in §150.1012(e).

Comment: The American Federation of Teachers (AFT) expressed concern about §150.1012(a)(1)(C), stating that the term "instructional setting" was not inclusive of virtual settings.

Agency Response: The agency disagrees. The term "instructional setting" does not exclude virtual settings.

Comment: AFT expressed concern about §150.1012(a)(1)(L), which defines the term "student growth," and §150.1013(a)(3), which defines the term "classroom teacher," and their applicability to virtual settings.

Agency Response: The agency disagrees that the rule requires modification. Student growth can still be measured in virtual settings.

Comment: AFT expressed concern about §150.1012(b)(1)(B) relating to teacher eligibility in virtual settings.

Agency Response: The agency disagrees that the rule requires modification. Teachers are eligible if they meet the eligibility requirements in a virtual setting.

Comment: AFT asked for guidance on implementing §150.1012(c)(2)(B), concerning test administration processes, in virtual settings.

Agency Response: The agency provides the following clarification. Section 150.1012 requires that a school district provide its test administration procedures in the application, but the rule does not require tests to be administered any particular way. The agency plans to provide guidance at a later date.

Comment: Good Reason Houston expressed support for §150.1012(c).

Agency Response: The agency agrees.

Comment: Best in Class and Good Reason Houston requested clarity about §150.1012(c)(1)(C) and (D) relating to how to move from provisional to regular status.

Agency Response: The agency provides the following clarification. To move from provisional to regular status, a school district will need to reapply and meet the requirements in §150.1012(c).

Comment: Good Reason Houston expressed concern for §150.1013(b)(2)(C) and recommended it be removed.

Agency Response: The agency disagrees. The proposed rule reflects the agency's authority under TEC, §21.3521(c).

Comment: Good Reason Houston requested clarity about §150.1012(g) and if the allotment will follow the designated teacher.

Agency Response: The agency provides the following clarification. TEC, §48.112, states that the allotment will be received by the district at which the teacher is employed.

Comment: Best in Class, The Texas Impact Network, 4 organizations and 18 school systems expressed support for §150.1012 and §150.1013.

Agency Response: The agency agrees that the proposed rules implement TEC, §21.3521.

Comment: Best in Class suggested adding in a percentage definition for the designations.

Agency Response: The agency disagrees that the suggested language should be added to §150.1012 or §150.1013. The designation performance standards referenced by the commenter are part of proposed new §150.1014, Teacher Designation Performance Standards.

Comment: Best in Class requested the addition of a time to correct any data deficiencies.

Agency Response: The agency disagrees that the suggested language should be included in rule. TEC, §21.3521(d)(2), requires the commissioner to enter into a memorandum of understanding with Texas Tech University (TTU) to monitor the quality and fairness of local optional teacher designation systems, and any issues related to data deficiency will be handled through TTU's process. In addition, because data is captured from the prior year, any deficiencies could not be addressed at the time of data validation.

Comment: San Antonio ISD requested additional clarity about the data validation expectations.

Agency Response: The agency provides the following clarification. TEC, §21.3521(d)(2), requires the commissioner to enter into a memorandum of understanding with TTU to monitor the quality and fairness of local optional teacher designation systems, and any issues related to data validation expectations will be handled through TTU's process.

Comment: Best in Class requested clarity about the use of other assessments in §150.1012(c)(2)(A)(ii).

Agency Response: The agency provides the following clarification. Other assessments can be used under §150.1012(c)(2)(A)(ii) as long as the assessments meet the criteria in the rule.

Comment: Best in Class requested clarity about §150.1012(c)(2)(C) concerning using prior year values.

Agency Response: The agency provides the following clarification. Prior year values are allowed under §150.1012(c)(2)(C) as long as they meet the criteria stated in the rule. Prior year values are only allowed if using multi-year appraisal data.

Comment: Grand Prairie ISD expressed concern about the use of TIA funds to teachers other than teachers of record.

Agency Response: The agency disagrees that the rule requires modification. The rule is implementing TEC, §48.112(i)(1)(A).

Comment: Stafford ISD expressed concern about the submission timelines due to COVID-19.

Agency Response: The agency provides the following clarification. The timelines specified in the rule are needed for the agency to determine the reliability and validity of the proposed local designation systems. Proposed new §150.1015, Local Optional Teacher Designation System Extenuating Circumstances, addresses adjustments due to the COVID-19 pandemic.

Comment: The Texas Public Charter Schools Association (TPCSA) expressed concern about including §150.1012(b)(1)(C) as it would exclude large open-enrollment charters.

Agency Response: The agency disagrees that the rule requires modification. The rule does not exclude funding for large open-enrollment charters.

Comment: TPCSA requested that uncertified teachers who work for open-enrollment charter schools be eligible for designations.

Agency Response: The agency disagrees. TEC, §21.3521 (b), requires certification for designated teachers.

Comment: TPCSA expressed concern that §150.1012(c)(2) would exclude the use of certain assessments such as MAP.

Agency Response: The agency disagrees. The rule is inclusive of all assessments that meet the requirements of the rule.

Comment: TPCSA requested that the term "standardized" be added to §150.1012(e)(3) to avoid unequal treatment of open-enrollment charter schools.

Agency Response: The agency disagrees. TEC, §21.3521(h), allows the agency to collect information necessary to implement the local designation systems.

Comment: ATPE requested that §150.1012(a)(1)(C) be amended to reflect TEC, §5.001.

Agency Response: The agency agrees and has revised §150.1012(a)(1)(C) at adoption to reference TEC, §5.001, to ensure alignment of definitions.

Comment: ATPE requested clarification of §150.1012(b)(1)(C) and the duration of the subsequent designation.

Agency Response: The agency provides the following clarification. The subsequent designation would be treated as a new designation.

Comment: ATPE expressed concern about §150.1012(c)(1)(B) related to applications that do not meet the standards under TEC, §21.3521, and requested that the language be changed from "TEA may permit the applicant to resubmit the application" to "TEA shall permit the applicant to resubmit the application."

Agency Response: The agency agrees and has revised §150.1012(c)(1)(B) at adoption to ensure standardization of the application process.

Comment: ATPE expressed concern about §150.1012(c)(1)(C) and (D) as the language may lead to unqualified approved systems.

Agency Response: The agency disagrees. Systems under provisional approval would meet the standards required by TEC, §21.3521, and §150.1012.

Comment: ATPE expressed concern about the inclusion of locally developed rubrics in §150.1012(c)(2)(A)(i)(II).

Agency Response: The agency disagrees. Locally developed rubrics will be required to meet the standards required by TEC, §21.3521, and §150.1012.

Comment: ATPE expressed concern about §150.1012(c)(2)(C) and requested the proposed rule be amended to ensure confidentiality of the teacher.

Agency Response: The agency disagrees and is implementing TEC, §21.3521(h). The agency is collecting only the data necessary to determine the validity and reliability of local designation systems. In addition, and as noted in TEC, §21.3521(h), data collected by the agency otherwise confidential remains confidential and is not subject to Texas Government Code, Chapter 552.

Comment: ATPE expressed support for §150.1012(e)(2) and requested the addition of implementation plans.

Agency Response: The agency agrees and has revised §150.1012(e)(2) at adoption to ensure implementation.

Comment: ATPE expressed concern that §150.1012 did not include a reference to high-needs campuses.

Agency Response: The agency disagrees that the rule requires modification. Section 150.1012(g)(2) references TEC, §48.112, which addresses high-needs campuses.

Comment: ATPE expressed concern about §150.1012(a)(1)(L) as it excludes absolute student achievement.

Agency Response: The agency disagrees. The rule does not exclude absolute student achievement.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §21.3521, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, as added by HB 3, 86th Texas Legislature, 2019, which established a teacher incentive allotment and requires the commissioner to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §21.3521 and §48.112, as added by House Bill 3, 86th Texas Legislature, 2019.

§150.1012. *Local Optional Teacher Designation System.*

(a) General provisions.

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

(A) Active Texas certification--A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The year in which the teacher observation and student growth measure is collected based on the proposed local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(H) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review and/or data validation for further approval.

(I) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(J) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(K) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(L) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(M) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(N) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:

(A) a \$500 fee for each teacher submitted for designation to TEA; or

(B) a system renewal fee to be determined by the commissioner and established in rule.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a Legacy Master Teacher Certificate;

(B) the teacher is employed or is to be employed by the recommending school district in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in the Texas Student Data System Texas Education Data Standards (TEDS) for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment; and

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation or is in the last year of a teacher designation.

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) and (B) of this subsection.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven calendar days after notice is provided, the application will be denied.

(B) If TEA determines that an application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application within three months of the original submission. If no resubmission is timely made, the application will be denied.

(C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

(D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

(E) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, congruence, and review of teacher observation data and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teacher and The Danielson Group, or another rubric that is based on observable, job-related behaviors, including teacher implementation of discipline management and the performance of teachers' students. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a student growth component that:

(I) if using a student learning objective, is aligned to the standards of the course, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, and includes criteria for scoring; or

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments;

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year. Multi-year data shall include student growth and observation data from the same year and teaching assignment.

(d) System expansion and amendments.

(1) School districts must apply for approval for additional eligible teaching assignments with previously unapproved student growth or teacher observation components, new student growth components, or new teacher observation components.

(2) Proposed amendments to other components of the application will be due at the time of annual submission. Additional information and application processes may be requested.

(e) Monitoring and program evaluation of approved local designation systems. For the annual data submission, approved school districts shall submit the following information regarding a local teacher designation system:

(1) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(2) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(3) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations. TEA reserves the right request data for the purposes of performance evaluation and investigation based on data review outcomes.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements;

(B) failure to comply with annual data submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA and Texas Tech University; or

(E) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher; or

(E) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval.

(i) For the initial disbursement after the approval of a local teacher designation system or system expansion, at least 90% of each allotment received must be spent on compensation of teachers employed at the campus at which the teacher for whom the school district received the allotment was employed for the first year of the designation.

(ii) Disbursements subsequent to the initial disbursement must meet the requirements of paragraph (2) of this subsection.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be distributed proportionally by the percent of time the employee is working in a role coded as 087 (Teacher) in the Texas Student Data System TEDS at each campus.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112. Allotment funding generated by a designated teacher working for multiple school districts shall be split equally among the districts that employ the teacher.

§150.1013. National Board for Professional Teaching Standards.

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

(1) Active Texas certification--A valid certification labeled as one year, provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(2) Charter school--A Texas public school that meets one of the following criteria:

(A) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(B) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(C) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(3) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(4) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(5) School district--The definition of a school district includes charter schools as defined in paragraph (2) of this subsection.

(b) Eligibility.

(1) Teachers with current National Board certification are eligible for a recognized designation starting in the 2020-2021 school year if the teacher:

(A) holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a Legacy Master Teacher Certificate; and

(B) registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner.

(2) Teachers with current National Board certification are eligible for a recognized designation starting in the 2019-2020 school year if:

(A) the teacher holds an active Texas certification under Chapter 233 of this title, a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title, or a Legacy Master Teacher Certificate;

(B) the teacher registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner; and

(C) the school district at which the teacher with National Board certification was employed in the 2019-2020 school year can demonstrate evidence of differentiated compensation for the teacher paid during the 2019-2020 school year.

(3) Teachers who are designated as recognized based on paragraphs (1) and (2) of this subsection are eligible to earn and receive designations under §150.1012 of this title.

(4) Beginning with the 2020-2021 school year, the first year of recognized designation will be the year in which the National Board certification was earned. For National Board certifications earned prior to the 2020-2021 school year, the first year of the recognized designation will be the 2020-2021 school year unless the 2020-2021 school year is the last year of National Board certification.

(5) The last valid year of the recognized designation is the last school year in which the National Board certification is valid unless the teacher earned a designation in a local optional teacher designation system under §150.1012 of this title, in which case the later of last year of designation applies.

(6) School districts are eligible to receive funding for a designated teacher if the teacher meets the following requirements:

(A) the teacher holds an active Texas certification under Chapter 233 of this title, a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title, or a Legacy Master Teacher Certificate; and

(B) the teacher has been or will be employed by the school district receiving the funding in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in the Texas Student Data System TEDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment.

(c) Reimbursement.

(1) Beginning in the 2020-2021 school year, school districts may request reimbursement for the following eligible National

Board fees paid under TEC, §21.3521, by the district or the teacher with National Board certification when National Board certification has been successfully earned:

(A) renewal fees up to \$1,250;

(B) certification fees up to \$1,900;

(C) maintenance of certification fees up to \$495; and

(D) fees for initial, renewed, or maintenance National Board certifications earned on or after the 2019-2020 school year.

(2) School districts requesting National Board certification reimbursement shall establish a process to ensure that teachers with National Board certification have received from the school district full reimbursement of eligible fees paid by the teacher before the school district can be reimbursed by Texas Education Agency (TEA).

(3) School districts are not required to apply to TEA for approval of National Board certification-based designations.

(d) The requirements of §150.1012(g)(1) and (2) of this title apply to funding referenced in this section.

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

Filed with the Office of the Secretary of State on July 1, 2020.

TRD-202002698

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 21, 2020

Proposal publication date: April 24, 2020

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

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.2

The Texas Optometry Board adopts amendments to §275.2 of Chapter 275, Title 22, with non-substantive changes to the proposed text published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1597). The rule will be republished.

The amendments implement House Bill 2174, House Bill 3285, and House Bill 2059, Regular Session, 86th Legislature, requiring designated licensees to complete continuing education in prescribing controlled substances and opioids. The legislation also requires designated licensees to take a continuing education course regarding human trafficking.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and House Bill 2174, House Bill 3285, and House Bill 2059, Regular Session, 86th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets House Bill 2174 as requiring certain licensees to take controlled sub-

stance education, House Bill 3285 as requiring certain licensees to take opioid prescriber education, and House Bill 2059 as requiring certain licensees to take human trafficking education.

§275.2. *Required Education.*

(a) Education for an advanced degree in optometric field or optometrically related field. One-hour credit will be given for each semester hour earned, and a total of 16 credit hours will be allowed for each full academic year of study.

(b) Research in lieu of training. Credit will be given only for full-time research. Sixteen credit hours will be given for each full year of research.

(c) Teaching. One credit hour is allowed for each education hour of teaching of board-approved continuing education courses.

(d) Continuing education courses. See §275.1(b) of this title (relating to General Requirements).

(e) Clinical rotations or rounds. One hour of continuing education credit will be given for each two clock hours spent on clinical rounds, for a maximum of four hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of eight hours of clinical rotations or rounds hours taken during the two-year period preceding license renewal. Sponsoring organizations and universities must submit information regarding scheduled rounds and certify to the board at least on a quarterly basis the number of continuing education hours obtained.

(f) Credit will be given for a maximum of eight hours of the combined total of correspondence course hours and on-line computer course hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of 16 hours of the combined total of correspondence course hours and on-line computer course hours taken during the two-year period preceding license renewal. On-line computer courses are those courses described in §275.1(b)(8) of this title. Correspondence courses must be sponsored and graded by accredited optometry colleges.

(g) Requirements for renewal of license imposed by other state law. A licensee that fails to timely meet these requirements may not renew the license.

(1) Two-hour controlled substances prescribing course. Section 481.07635 of the Health and Safety Code requires each active optometric glaucoma specialist licensed prior to September 1, 2020, to complete two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances on or before September 1, 2021. Each active optometric glaucoma specialist licensed after September 1, 2020, must complete the continuing education required by this subsection within one year of the initial optometric glaucoma specialist license date. Licensees will receive two credit hours upon submission of written proof of completion of the approved course. This is a one-time education requirement. The taking of board-approved courses described in this subsection in subsequent years may satisfy the professional responsibility requirement of §275.1(b) of this title.

(2) One-hour opioid prescribing course. To renew a license for 2021 and subsequent years, §481.0764 of the Health and Safety Code requires all active licensees who prescribe or dispense opioids to take each year a one-hour board-approved continuing education course covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. Licensees will receive one credit hour upon submission of written proof of completion of the approved course.

(3) One-hour human trafficking course. To renew a license for 2021 and subsequent years, §116.002 of the Occupations Code requires all active licensees who provide direct patient care to complete a training course on identifying and assisting victims of human trafficking. Licensees will receive one general credit hour upon submission of written proof of completion of the approved course.

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002655

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: July 19, 2020

Proposal publication date: March 6, 2020

For further information, please call: (512) 305-8502



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; the repeal of §344.32; and new §344.66.

The amendments to §§344.1, 344.24, 344.30, 344.35, 344.36, 344.50, 344.62, and 344.65 are adopted with change to the proposed text as published in the January 31, 2020, *Texas Register* (45 TexReg 694), and, therefore, will be republished. The amendments to §§344.20 - 344.22, 344.31, 344.33, 344.34, 344.37, 344.38, 344.40, 344.42, 344.43, 344.51, 344.52, 344.60, 344.61, 344.63, 344.64, 344.70 - 344.72, and 344.80; new §344.66; and the repeal of §344.32 are adopted without change to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This adopted rulemaking is in response to two petitions submitted by the Irrigator Advisory Council (IAC), which were granted by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of spill resistant vacuum breakers (SVBs); require that the backflow prevention assemblies be tested after repair, replacement, or relocation; require the use of in-line filters or strainers as recommended by the manufacturers; and change the term "backflow prevention devices" to "backflow prevention assemblies."

The executive director's staff collected stakeholder feedback on the recommended amendments in the IAC's petitions. Public meetings were held in Austin, Corpus Christi, El Paso, Fort

Worth, Harlingen, Houston, Lubbock, San Antonio, and Tyler. In addition, written comments were received from 207 interested parties. Some feedback from the meetings and content from comments received were incorporated into the adopted rule language.

In 2007, the 80th Texas Legislature passed three bills directly affecting landscape irrigation. House Bill (HB) 4 and Senate Bill (SB) 3 directed the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. These rule changes were included in the most recent updates to Chapter 344 that were effective on January 1, 2009. HB 1656 added a new landscape irrigation license classification, irrigation inspector, and directed municipalities with a population of 20,000 or more to adopt ordinances that require irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. Those municipalities were required to adopt standards and specifications for irrigation systems and include rules adopted by the TCEQ. Municipalities that adopted ordinances were also required to exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well which is used for domestic purposes. HB 1656 gave water districts the option of adopting rules to govern landscape irrigation in their areas. These provisions were not included in a previous update to Chapter 344 and were added with this rulemaking.

This adopted rulemaking incorporates some of the requested changes in the two IAC rule petitions, as well as: amends existing sections, repeals a section, and adds a new section. These adopted revisions strengthen the rules by providing for increased protection of public health and water conservation. In addition, this adopted rulemaking aligns terms and definitions in this chapter with those in other, relevant chapters of 30 Texas Administrative Code (TAC). Specifically, definitions are amended to align with 30 TAC Chapter 290, Public Drinking Water.

Section by Section Discussion

The commission made various stylistic, non-substantive changes, such as, grammatical corrections, correct use of references, and revisions to improve readability. Additionally, the commission removed the word "installers" since this word is no longer recognized by either the industry or the TCEQ and replaced the term "backflow prevention devices" with "backflow prevention assemblies." These changes are non-substantive and generally not discussed in this preamble.

SUBCHAPTER A: DEFINITIONS

§344.1, Definitions

The commission adopts amended §344.1(1), to align the "Air gap" definition with the air gap definition used in Chapter 290. This is a more technically correct definition and provides consistency across the two chapters.

The commission adopts amended §344.1(2) by adding a definition for "As-built drawing" as recommended in the IAC petition. This term is commonly used in the irrigation industry to refer to the final irrigation plan produced at the completion of an installation.

The commission adopts the removal of the definition of "Atmospheric Vacuum Breaker" in §344.1(2). This was requested in the rule petition, because it is no longer a viable form of backflow prevention for irrigation systems. The IAC voted in favor of

removing the AVB as an approved backflow prevention assembly for landscape irrigation on August 18, 2016.

The commission adopts the amended definition of "Backflow prevention" in §344.1(3). The revision was made to improve clarity and to add the term "backpressure" as a cause of reversal of flow.

The commission adopts the amended definition of "Backflow prevention assembly" in §344.1(4). The revision clarifies that this is a mechanical assembly and can be used with health hazard and non-health hazard installations. Additionally, the term "backflow" was replaced by "hydraulic conditions" to refer to additional conditions where a backflow prevention assembly is required.

The commission adopts the amended definition of "Cross-connection" in §344.1(7) to align with the definition used in Chapter 290.

The commission adopts the amended definition of "Design pressure" in §344.1(9) to improve clarity and reference the head-to-head spacing requirement.

The commission adopts the amendment of the term "Double check valve" in §344.1(10) to "Double check valve assembly" to refer to all the parts for the proper operation of the double check valve assembly. The IAC recommended that this definition be removed and stated it is not appropriate for use if all landscape irrigation systems were classified as a health hazard. Stakeholder feedback from other interested parties did not support removal of this definition or classification of all landscape irrigation systems as a health hazard. Please note that local programs may elect to restrict usage of these devices.

The commission adopts the amended definition of "Employed" in §344.1(12) to reference the amended definition of "Irrigation services" in §344.1(20) rather than "consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems."

The commission adopts the added definition for "Exempt business owner" in §344.1(13) as referenced in Texas Occupations Code, Chapter 1903 and consistent with the usage in §344.31. This term is already in §§344.21, 344.22, 344.32, and 344.35. Subsequent paragraphs were renumbered.

The commission adopts the added definition for "Graywater" in §344.1(14) to align with 30 TAC Chapter 210, Use of Reclaimed Water, Subchapter F, Use of Graywater Systems. There has been an increase in the use of graywater in irrigation systems and this chapter is updated to reflect that increase. This change was recommended by the IAC. Subsequent paragraphs were renumbered.

The commission adopts the amended definition of "Head-to-head spacing" in §344.1(15) (previously §344.1(13)) to improve clarity by specifying that the water spray must reach from device to device and to allow for a 10% deviation from the manufacturer's published radius.

The commission adopts the amended definition of "Health hazard" in §344.1(16) (previously §344.1(14)) to align with the definition used in Chapter 290.

The commission adopts the removal of the definition of "Inspector" in §344.1(16) and combines it with the definition of "Irrigation inspector" in §344.1(18) for improved clarity. The definition of "Irrigation inspector" was amended accordingly.

The commission adopts the removal of the definition for "installer" in §344.1(17) since there is no longer a license for "installer" in the landscape irrigation program. This is no longer recognized as a valid term in the industry and has been replaced by "irrigation technician." This change was recommended by the IAC.

The commission adopts the amended definition of "Irrigation inspector" in §344.1(18)) to incorporate language from the definition of "Inspector," which was removed.

The commission adopts the amended definition of "Irrigation plan" in §344.1(19) to reference the applicable rules in Chapter 344, Subchapter F, Standards for Designing, Installing and Maintaining Landscape Irrigation Systems, and includes the term "as-built drawing," which was added to this section as a defined term.

The commission adopts the amended definition of "Irrigation services" in §344.1(20) to make it more inclusive of all activities involving an irrigation system and added "selling" to the list of services included in this term.

The commission adopts the amended definition of "Irrigation system" in §344.1(21) to improve clarity. Additionally, in response to comments the commission adopts to include sprinklers and sprinkler systems used for irrigation as part of the definition for an irrigation system.

The commission adopts the amended definition of "Irrigation technician" in §344.1(22) to improve clarity and adds the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Irrigation zone" in §344.1(23) to improve clarity.

The commission adopts the amended definition of "Irrigator" in §344.1(24) to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Master valve" in §344.1(31) to remove the term "remote" and incorporate the term "assembly" for consistency with the amended definition of "backflow prevention assembly."

The commission adopts the amended definition of "New installation" in §344.1(33) to include the "complete replacement of an existing irrigation system." This reflects the practice in the irrigation industry to consider complete replacements as new systems.

The commission adopts the amended definition of "Non-health hazard" in §344.1(34) to align with the definition used in Chapter 290.

The commission adopts the amended definition of "Pass-through contract" in §344.1(36) to clarify that it is also considered a sub-contract to reflect irrigation industry practices.

The commission adopts the amended definition of "Potable water" in §344.1(37) to refer to the definition of "drinking water" in Chapter 290.

The commission adopts the amended definition of "Records of landscape irrigation activities" in §344.1(40) to add the term "irrigation services" in place of the list of services, "installation, main-

tenance, alteration, repair, or service." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Static water pressure" in §344.1(42) to clarify that "generally, this is the pressure available to the irrigation system." This is consistent with the irrigation industry use of the term.

The commission adopts the amended definition of "Supervision" in §344.1(43) to remove the reference to the "installer" which is no longer a recognized TCEQ licensed individual. This change was recommended by the IAC.

The commission adopts the added definition of "Temporary irrigation system" in §344.1(44) to establish the types of systems addressed in new §344.66.

SUBCHAPTER B, STANDARDS OF CONDUCT FOR IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

§344.20, Purpose of Standards

The commission adopts amended §344.20(a) to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

The commission adopts amended §344.20(b) to remove the word "installer" as it is no longer a recognized TCEQ licensed individual and replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

§344.21, Intent

The commission adopts amended §344.21(a) to remove the word "installer" because it is no longer a recognized TCEQ licensed individual.

The commission adopts §344.21(c) to address exemptions for on-site sewage systems, agricultural irrigation, and irrigation systems connected to a private well to align with state statutes (HB 1656, 80th Texas Legislature, 2007).

§344.22, Proficiency in the Field of Irrigation; Representation of Qualifications

The commission adopts amended §344.22 to remove "installers" because it is no longer a recognized TCEQ licensed individual.

§344.24, Local Regulation and Inspection

The commission adopts amended §344.24(a) to replace "special purpose district" with "water district" to reflect the typical organizational structure of districts as they relate to public water supplies. Additionally, the commission adopts to remove "installer" in amended §344.24(a) as it is no longer a recognized TCEQ licensed individual.

The commission adopts amended §344.24(b) to allow for any city, town, county, water district, other political subdivision of the state, or public water supplier to require inspections of landscape irrigation systems on sites that are connected to the public water supply.

The commission adopts amended §344.24(c) by removing the reference to "a water district that chooses to implement a landscape irrigation program" and changing the word "may" to "must" to reflect the mandatory nature of this rule. The commission also adopts the removal of the words "if a municipality" for better clarity. The previous combined wording did not make it clear that municipalities with a population of 20,000 or more were required to have a program.

The commission adopts §344.24(d) to specifically address water districts that choose to implement a landscape irrigation program per statute (HB 1656). This change was recommended by the IAC.

The commission adopts the removal of existing §344.24(d) and added this requirement to amended §344.37(b)(6). The commission adopts the removal of existing §344.24(e) and (f), since these requirements are included in adopted §344.21(c).

SUBCHAPTER C, REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

§344.30, License Required

The commission adopts amended §344.30(a) to incorporate "irrigation services" in place of the list of services, "sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system" and to clarify that a licensed irrigator is not an "exempt business owner." This is consistent with the added definition for "Exempt business owner" and the amended definition of "Irrigation services" in §344.1.

The commission adopts the removal of §344.30(b) since this requirement expired on December 31, 2009 and refers to "installer" which is no longer a recognized TCEQ licensed individual. This change was made per recommendation from the IAC. The subsequent subsections were re-lettered.

The commission adopts amended §344.30(b) (previously §344.30(c)) to remove "beginning January 1, 2009" since this date has passed and is no longer relevant. There is no change to the description of an irrigation technician.

The commission adopts to replace "he or she is" with "if they are" in amended §344.30(g).

§344.31, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission adopts the amendment of the title of this section from "Exemption for Business Owner Who Provides Irrigation Services" to "Responsibilities of a Business Owner Who Provides Irrigation Services."

The commission adopts amended §344.31, which includes the language from repealed §344.32, Responsibilities of a Business Owner Who Provides Irrigation Services, since both rules refer to the overall responsibilities for exempt business owners. With this change, §344.31 becomes §344.31(a) and §344.32 becomes §344.31(b). The commission also adopts adding the term "irrigation services" to refer to the various services including design, installation, maintenance, alteration, repair, or servicing of irrigation systems. This is consistent with the amended definition of "irrigation services" in §344.1. The commission also adopts adding the word "business" to "exempt owner" in §344.31(b) (previously §344.32) to align with the definition of exempt business owner in §344.1.

§344.32, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission adopts the repeal of §344.32 and adds the rule language to §344.31 as adopted subsection (b) since both rules refer to the overall responsibilities for exempt business owners.

§344.33, Display of License

The commission adopts amended §344.33(a) to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.34, Use of License

The commission adopts amended §344.34(b) to add "or entity" to broaden the applicability of this rule to include businesses and to remove "licensed installer" as it is no longer a recognized TCEQ licensed individual. The commission adopts the amendment to §344.34(d) to remove references to installer as it is no longer a recognized TCEQ licensed individual.

§344.35, Duties and Responsibilities of Irrigators

The commission adopts amended §344.35(c) to clarify that the "irrigator-in-charge" is responsible for the irrigation services performed by the exempt business owner's company.

The commission adopts amended §344.35(d)(1) to remove "stamp or rubber" to allow for different approved types of an irrigator's seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

The commission adopts amended §344.35(d)(4) by replacing the word "device" with "assembly" to be consistent within the chapter.

The commission adopts amended §344.35(d)(9) to remove "system beginning January 1, 2010." This date has passed and is no longer relevant.

The commission adopts amended §344.35(d)(10) and (12) (previously §344.35(d)(13)) to refer to "conducting irrigation services" as defined in §344.1 rather than listing specific services.

The commission adopts the removal of §344.35(d)(11) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent paragraphs were renumbered.

§344.36, Duties and Responsibilities of Irrigation Technicians

The commission adopts the amendment of the title of this section from "Duties and Responsibilities of Installers and Irrigation Technicians" to "Duties and Responsibilities of Irrigation Technicians." The commission adopts amended §344.36(a) to clarify that irrigation technicians are required to work under the supervision of a licensed irrigator and remove references to "installer" since it is no longer a recognized TCEQ licensed individual. An irrigation technician's responsibilities have been moved from subsection (a) to paragraphs (1) - (3) and amended as discussed below.

The commission adopts amended §344.36(a)(1) to include the connection of an irrigation system to a water supply.

The commission adopts amended §344.36(a)(2) to include the term "backflow prevention assembly" to be consistent with the amended definition in §344.1. The commission adopts to replace "an approved" with "a" in amended §344.36(a)(2).

The commission adopts amended §344.36(a)(3) by referencing "irrigation services" as defined in §344.1 rather than listing specific services.

The commission adopts §344.36(a)(4) to include the requirement to conduct the final walkthrough as required by §344.63.

The commission adopts the removal of §344.36(c) since this requirement applies to an "installer" which is no longer a rec-

ognized TCEQ licensed individual. The subsequent subsection §344.36(d) was re-lettered.

The commission adopts §344.36(d) to include the requirement that an irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37, Duties and Responsibilities of Irrigation Inspectors

The commission adopts amended §344.37(a) to include "licensed plumbing inspector" as someone who is qualified to conduct irrigation system inspections.

The commission adopts amended §344.37(b) to clarify the recordkeeping requirements for irrigation inspectors.

§344.38, Irrigator Records

The commission adopts the amendment of the title of this section from "Irrigator, Installer, and Irrigation Technician Records" to "Irrigator Records."

The commission adopts the amendment to this section to remove references to "rubber stamp" and leave the more general requirement for "seal" to allow for alternate types of seals. This section is also amended to remove references to records kept by installers and irrigation technicians. Installer is no longer a recognized licensed individual and there are no specific recordkeeping requirements for irrigation technicians.

SUBCHAPTER D, LICENSED IRRIGATOR SEAL

§344.40, Seal Required

The commission adopts amended §344.40 so that the rule is strengthened against the inappropriate use of an irrigator's seal. This is to prevent occasions when an irrigator allows another person to use their seal, change the format of their seal so that it does not meet the requirements in §344.41, or does not sign and date their seal.

§344.42, Seal Display

The commission adopts amended §344.42(b) to remove references to a specific type of media used to produce the seal. The TCEQ recognizes that emerging technology will provide different acceptable ways for irrigators to display and use their seal.

§344.43, Seal Use

The commission adopts amended §344.43(e) to simplify the language so that it is consistent with the rest of the rule.

The commission adopts amended §344.43(e)(1) so that the language regarding the change aligns with §344.43(e).

The commission adopts amended §344.43(e)(2) to clarify that the irrigator making the change is responsible for that change.

The commission adopts amended §344.43(e)(3) to require that the irrigator must seal any changes made.

The commission adopts amended §344.43(f) to specify that the irrigator is responsible for the portion of the irrigation plan they created or changed.

SUBCHAPTER E, BACKFLOW PREVENTION AND CROSS-CONNECTION

§344.50, Backflow Prevention Methods

The commission adopts amended §344.50(a) to eliminate the requirement for approval of backflow prevention assemblies. It was determined that there was no practical way to meet this requirement. Instead, the requirement is to install the assembly

per manufacturer' recommendations and to test upon installation. This is consistent with the requirements in Chapter 290.

The commission adopts amended §344.50(b) and (b)(1) to align with the definition of an air gap in §344.1(1).

The commission adopts amended §344.50(b)(2) to reference the installation and testing requirements in §344.50(a).

The commission adopts amended §344.50(b)(3) to reference the installation and testing requirements in §344.50(a) and describe the hydraulic conditions under which the assembly will work. The word "device" was changed to "assembly" per the IAC's recommendation.

The commission adopts amended §344.50(b)(4) to replace atmospheric vacuum breakers (AVBs) as an option for backflow prevention with SVBs per the IAC's recommendation. In practice, AVBs are inadequate for backflow prevention on irrigation systems, because they will not function correctly with a downstream valve. Currently available sprinkler heads are equipped with check valves to conserve water and these are not functional with AVBs. Since AVBs cannot be used with a valve downstream of them, each individual zone would have to have its own AVB. AVBs must be installed a minimum of six inches above the highest downstream emission device. These factors increase the cost and complexity of installation with no appreciable benefit. The commission also corrects a grammatical error in the amended language in §344.50(b)(4) by removing the word "in."

Because SVBs were included as an option for backflow prevention, requirements for the correct hydraulic conditions (no backpressure) and height installation requirements were included in §§344.50(b) and (b)(4)(A). These changes were recommended by the IAC.

The commission adopts amended §344.50(b)(4)(A) to also specify the potential for backpressure.

The commission adopts amended §344.50(b)(4)(B) to specify the minimum installation height and that it is determined from the highest downstream opening.

The commission adopts the removal of the rule language in §344.50(c) and moves it to adopted §344.50(e) per the IAC's recommendation. Subsequent subsections were re-lettered.

The commission adopts amended §344.50(c) (formerly subsection (d)) to replace the word "device" with the word "assembly."

The commission adopts amended §344.50(c)(1) to add the word "and" for better readability.

The commission adopts amended §344.50(c)(2) to eliminate the language referencing backpressure since this information was determined to be incorrect. The subsequent paragraph was renumbered.

The commission adopts amended §344.50(d) (formerly subsection (e)) to include the word "assemblies" and to specify the installation requirements.

The commission adopts amended §344.50(d)(3) to remove the requirement for the Y-type strainer as the maintenance requirements to periodically clean it did not make it practical to use. Subsequent paragraphs were renumbered.

The commission adopts amended §344.50(d)(3) to specify that there must be clearance around the assembly to facilitate testing.

The commission adopts §344.50(e) to specify testing requirements for backflow prevention assemblies, especially those in-

stalled to protect against health hazards. This change was requested by the IAC.

§344.51, Specific Conditions and Cross-Connection Control

The commission adopts amended §344.51(a) to make it applicable to any method where a chemical can be introduced into an irrigation system and increase the hazard to the potable water supply. This language was removed from §344.51(c) and moved to §344.51(a).

The commission adopts amended §344.51(b) to address the hazard posed by those irrigation system components with chemical additives added to them in the manufacturing process. The subsequent subsection was re-lettered.

The commission adopts the removal of §344.51(b) and moves the language to §344.51(c). The language remains the same.

The commission adopts amended §§344.51(d)(1) and (2) to clearly specify that an irrigation system on a site that also has an on-site sewage facility (OSSF) is considered a health hazard.

§344.52, Installation of Backflow Prevention Assembly

The commission adopts the amendment of the title of this section from "Installation of Backflow Prevention Device" to "Installation of Backflow Prevention Assembly."

The commission adopts amended §344.52(b) to add the word "prevention" as "backflow prevention assembly" is the correct term.

The commission adopts amended §344.52(c) to remove the requirement to provide a test report to the "irrigation system's owner or owner's representative" and to replace the word "device" with "assembly." This aligns with the requirements in Chapter 290.

SUBCHAPTER F, STANDARD FOR DESIGNING, INSTALLING AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

§344.60, Water Conservation

The commission adopts the update of the reference regarding the definition of "Water conservation" from §344.1(44) to §344.1(45).

§344.61, Minimum Standards for the Design of the Irrigation Plan

The commission adopts amended §344.61(a) to stress the uniqueness of each individual irrigation system and the irrigation plan for it. These changes were also made to address occasions where the same irrigation plan is used multiple times for different sites. The requirement to submit a drawing showing the actual installation has been removed from §344.61(a) and is addressed in the amendment to §344.61(c). Language addressing how variances from the original plan can be authorized has been removed from §344.61(a) and is addressed in the amendment to §344.61(d) and (e).

The commission adopts amended §344.61(b) to specify that the irrigation plan shall clearly show that those areas to be watered were adequately covered and those that were not were clearly identified. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(2) to reference the requirements in §344.61(b) and specify some common physical features of a site to be irrigated.

The commission adopts amended §344.61(c)(4) to specify what should be included on the legend of the irrigation plan and pre-

vent irrigation plans with legends that do not adequately describe the symbols used on the irrigation plan. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(5) to specify what is expected on the irrigation plan in regard to the zone flow measurement and eliminate occasions where the zone flow measurement does not include the station number or valve size. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(7) to establish that specifications are required for all irrigation system components and lists certain required information.

The commission adopts §344.61(d) to specify that changes shall be clearly noted in red ink and place requirements on the change itself. This language was moved from §344.61(a).

The commission adopts §344.61(e) to specify that the as-built drawing provided to the owner or owner's representative shall clearly show all the changes made to the irrigation plan.

§344.62, Minimum Design and Installation Requirements

The commission adopts amended §344.62(b)(1) to allow for a 10% discrepancy from the manufacturer's published radius in the spacing of emission devices. This accommodates variations in installations. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(b)(3) to apply the requirement for directional spray of emission devices away from impervious surfaces to all irrigation systems and clarify that this is a requirement for all installations.

The commission adopts amended §344.62(c) to include the requirement to provide the optimum pressure for an emission device and promote water conservation while adequately watering the site. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(d) to clarify that the acronym "PVC" means polyvinyl chloride.

The commission adopts amended §344.62(g) to further clarify that water shall not be sprayed on surfaces made of impervious materials.

The commission adopts amended §344.62(h) by changing the word "device" to "assembly" to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.62(k) by changing the word "device" to "assembly" to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.62(l) to specify that the required depth of pipes

is six inches and is measured from the topmost pipe so that multiple pipes laid in one trench do not impinge on the depth requirement. For example, irrigators may erroneously lay multiple pipes in one trench and the topmost pipe may only be three inches from the surface not the required six inches. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(n) to specify that the lid of the valve box shall also be color-coded purple, not just the box. This addresses instances where the box is buried in the ground, with only the lid being visible. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(o) to remove the effective date as it has passed.

The commission adopts §344.62(p) to provide clear requirements for valves and other irrigation system components to be housed in valve boxes. These components are buried. If they are not housed in a valve box, they cannot be readily located.

§344.63, Completion of Irrigation System Installation

The commission adopts amended §344.63 to clarify that this section applies to the irrigator and irrigation technician. The introductory statement has been amended to specify "on-site" supervision for the installation and requires the irrigator to provide the items listed in §344.63(1) - (4).

The commission adopts amended §344.63(2) to specify that the completed maintenance checklist shall be provided to the owner or owner's representative.

The commission adopts amended §344.63(2)(A) to accommodate occasions when an automatic controller is not used. Some irrigation systems do not use an automatic controller to turn the different zones on and off and instead use a valve turned by hand.

The commission adopts amended §344.63(2)(B) to provide better clarity and the meaning of the acronym "historical ET" which means "historical evapotranspiration."

The commission adopts amended §344.63(2)(C) by providing a more concise explanation of irrigation components that should be listed for maintenance and frequency of service.

The commission adopts amended §344.63(2)(D) to improve clarity and include the defined term from §344.1(2) "as-built drawing" which is occasionally provided to the owner or owner's representative upon completion of the installation.

The commission adopts amended §344.63(3) to clarify that the ink on the irrigator's sticker shall be waterproof.

The commission adopts amended §344.63(4) to include the defined term in §344.1(2) "as-built drawing" which is commonly used in the industry and provided to the owner or owner's representative at completion.

§344.64, Maintenance, Alteration, Repair, or Service of Irrigation Systems

The commission adopts the removal of existing §344.64(a) and moves it to §344.72(c).

The commission adopts amended §344.64(a) (previously subsection (b)) to specify that trenches shall be filled with soil free of any objects that could damage the irrigation system and should be compacted to eliminate depressions that could develop if not compacted.

The commission adopts amended §344.64(b) (previously subsection (c)) to provide a meaning for the acronym PVC.

The commission adopts amended §344.64(c) (previously subsection (d)) to clarify the location of the isolation valve, replace the word "device" with "assembly" as per the IAC's recommendation, and reference the installation requirements in §344.62(k).

§344.65, Reclaimed Water

The commission adopts amended §344.65(4) to clarify that the backflow prevention assembly is required to be on the water line providing water to the entire site to protect against contamination. Additionally, the commission adopts to replace the word

"device" to "assembly" in amended §344.65(4) to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.65(5) to clarify the size of the required sign.

§344.66, Temporary Irrigation Systems

The commission adopts new §344.66 to provide rules that regulate temporary irrigation systems to provide for water conservation and the protection of public health.

The commission adopts new §344.66(a) to state that temporary irrigation systems must be installed by appropriately licensed individuals.

The commission adopts new §344.66(b) to state that temporary irrigation systems connected to potable water supplies pose a contamination hazard and require backflow prevention.

The commission adopts new §344.66(c) to state that temporary irrigation systems must be installed in a manner that conserves water.

The commission adopts new §344.66(d) to state that temporary irrigation systems must be temporary and must have a definite end date at which time they will be removed.

SUBCHAPTER G, ADVERTISING, CONTRACT, AND WARRANTY

§344.70, Advertisement

The commission adopts amended §344.70(a) to simplify the subsection by using the term "irrigation services" and specify that the irrigator's license number must be visible on both outward sides of the vehicle used to advertise irrigation services.

The commission adopts amended §344.70(b) to apply the requirement regardless of the media used to advertise. This change was made per a recommendation from the IAC.

The commission adopts amended §344.70(c) to clarify the location of the information available to the public for complaint purposes.

§344.71, Contracts

The commission adopts amended §344.71(a) and (b) to provide the correct TCEQ website address and Mail Code information.

The commission adopts amended §344.71(c) to clarify that regardless of the existence of a pass-through contract, the irrigator is still responsible for providing a warranty to the owner or owner's representative.

§344.72, Warranties

The commission adopts amended §344.72(b) to provide the correct TCEQ website address and Mail Code information.

The commission adopts amended §344.72(c) to specify that during the warranty period the irrigator is responsible for the work they performed or that was performed under their supervision. This subsection also relieves the irrigator of any responsibility for work performed by any other individual on an irrigation system they installed.

SUBCHAPTER H, IRRIGATOR ADVISORY COUNCIL

§344.80, Irrigator Advisory Council

The commission adopts amended §344.80(e) to clarify that the council member terms are staggered with three member's terms ending each odd-numbered year and add that when a mem-

ber leaves the council before his or her term expires, an interim member is selected to serve the remainder of the departing member's term.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Administrative Procedure Act, Texas Government Code, §2001.001 et. seq., 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 Texas Government Code, §2001.0225(g)(3). A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rulemaking is to strengthen the rules and to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are adopted to align with Chapter 290. In addition, the rules provide for better protection of public health and better water conservation. Protection of human health and the environment may be a by-product of the adopted rules, but it is not the specific intent of the rules. Therefore, the commission concludes that the adopted rules do not constitute a major environmental rule.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under specific state law.

The adopted rules do not exceed a federal standard because there are no federal standards regulating the practice of landscape irrigation. The adopted rules do not exceed state law requirements. Also, the adopted rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the state of Texas and an agency or representative of the federal government to implement a state and federal program regarding landscape irrigation. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency.

Therefore, Texas Government Code, §2001.0225, is not applicable to these adopted rules.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to strengthen the rules and to align terms and definitions in this chapter with those in other, rel-

evant chapters of 30 TAC. Specifically, definitions are adopted to align with Chapter 290. In addition, this rulemaking provides for better protection of public health and better water conservation.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because the adopted rules will neither 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 these regulations. In other words, these rules will not constitute a statutory or constitutional taking because they only update existing rules to comply with current technical standards and conservation methods and do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the adopted rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on February 27, 2020. The comment period closed on March 3, 2020. The commission received comments from 2greenirrigation, LLC, Accurate and Accountable Backflow, Adams Engineering & Development Consultants (Adams), Andy's Sprinkler and Drainage, Austin Water, Austin Water SSD, Bac-Flo Unlimited, Inc, Barron Irrigation Repair, LLC, C2 Backflow Services, LLC, Christian Irrigation, City of Allen, City of Denton, City of Frisco, City of Saginaw, Classic Backflow, LLC, Coleman's Lawn Care, Conserva Irrigation, Dallas Irrigation Association (DIA), Denton Lawn Sprinkler, Inc., Express Lawn Sprinklers LLC, Frisco Independent School District (Frisco ISD), Greg's Sprinkler Works, Irrigation Supply Inc., Irri-Light Incorporated (Irri-Light), Kalan Backflow Service, Longhorn, Inc., MasterScapes, MCR Environmental Services, Inc., O'Neill & Dunbar, Inc., Prince Irrigation, Repair Masters Sprinkler Repair, LLC, RW Long, Inc., South Plains Irrigation Association (SPIA), Studio 16:19, Terry's Lawn Care, Texas Association of Builders (TAB), Texas Irrigation Association (TXIA), Texas Irrigation Supply, Texas Nursery & Landscape Association (TNLA), Texas Outdoors, Texas Star, Tomball Independent School District (Tomball ISD), Town of Prosper, WaterMark Irrigation, Wylie Northeast S.U.D. (Wylie), and seventeen individuals.

Response to Comments

Comment

Several commenters stated the revisions will protect the state water supply.

Response

The commission acknowledges these comments.

Comment

2greenirrigation, LLC, Accurate and Accountable Backflow, Bac-Flow Unlimited, Inc, C2 Backflow Services, LLC, City of

Allen, City of Saginaw, Classic Backflow, LLC, Conserva Irrigation, O'Neill & Dunbar, Inc., Repair Masters Sprinkler Repair, LLC, Tomball ISD, Town of Prosper, and six individuals commented that landscape irrigation systems should be considered health hazards.

Andy's Sprinkler and Drainage, City of Denton, City of Frisco, Coleman's Lawn Care, DIA, Express Lawn Sprinklers LLC, Greg's Sprinkler Works, Prince Irrigation, Studio 1619, Terry's Lawn Care LLC, TAB, TXIA, TNLA, Texas Star, WaterMark Irrigation, Wylie and five individuals commented that landscape irrigation systems should not be considered health hazards.

Response

The commission responds that the IAC requested that landscape irrigation systems be considered health hazards. After nine public meetings and an open comment period, the commission determined that there was not an adequate demonstration that all irrigation systems should be considered health hazards. The determination that all irrigation systems should not be considered health hazards was reflected in the draft rules that were published on January 31, 2020. The commission did not make any changes to the rules as a result of these comments.

Comment

City of Denton, Greg's Sprinkler Works, Longhorn, Inc, MasterScapes, Prince Irrigation, Texas Star, and one individual commented that additional input from the public is required, and the public is not convinced of the necessity for these rule revisions.

Response

The commission responds that the public was given opportunity to provide comments during the stakeholder process, the public hearing, and the comment period for this rulemaking. All comments were considered during this rule revision. No changes were made in response to these comments.

Comment

City of Denton, City of Frisco, Greg's Sprinkler Works, and Texas Irrigation Supply commented that the proposed rule revisions felt like an unfunded or unenforceable mandate.

Response

The commission responds that the fiscal impact of the Chapter 344 rule revisions was evaluated, and it was determined the revisions will not have an adverse impact on property owners or programs of local jurisdictions. The changes requested in the original petitions which may have had a significant impact, such as considering all irrigation systems as health hazards, were not included in these rule revisions. The commission recognizes that local jurisdictions may implement more stringent requirements and those costs will be evaluated at the local government level. No changes were made in response to these comments.

Comment

City of Frisco suggested simplifying reporting complaints against unlicensed workers.

Response

The commission responds that the complaint process used to investigate unlicensed individuals installing and/or repairing landscape irrigation systems is not a part of the scope of this rulemaking but may be considered in a future rulemaking. No changes were made as a result of this comment.

Comment

Classic Backflow, LLC commented that the TCEQ rules do not meet changes addressed in the 2015 International Plumbing Code (amended) Backflow/Cross-Connection Control Requirements amendment 608.16.5.

Response

The commission responds that, while there are benefits for TCEQ regulations to mirror the IPC, there is no requirement for the Chapter 344 regulations to meet the requirements in the IPC. No changes were made as a result of this comment.

Comment

DIA, Irrigation Supply Inc., TXIA, TNLA, and 2 individuals commented that the proposed changes are needed to ensure rules are clear, consistent, and enforceable.

Response

The commission acknowledges these comments.

Comment

Irri-Light commented they felt the proposed rules should be provided to new home and pool builders, and to cities and towns with an OSSF code enforcement office.

Response

The commission responds that the revised rules will be published in regulatory guidance and made available to the regulated community and local jurisdictions. Information on the revised rules will be incorporated into outreach and other educational opportunities to facilitate implementation. No changes were made as a result of this comment.

Comment

O'Neill & Dunbar, Inc. and two individuals commented that in-line filters and strainers, including Wye-type filters, are helpful and should be required.

Response

The commission responds that information received during the stakeholder process as well as from industry subject matter experts did not support the required use of in-line filters. Local jurisdictions may adopt local rules that are more stringent than TCEQ requirements. No changes were made as a result of these comments.

Comment

Texas Star expressed concern that companies are polluting local stormwater and the Trinity River in their region and that the commission is not doing anything about it.

Response

The commission responds that this rulemaking was not specific to any receiving water bodies. Complaints related to stormwater discharges can be submitted to the commission and will be investigated. No changes were made as a result of this comment.

Comment

TNLA commented they appreciated the clarity of "exempt business owner" in the rule revisions and requested that "recommendation(s)" in §344.50 be changed to "installation guidelines."

Response

The commission responds that the language in §344.50 states "recommendation(s)" to align with the language used in Chapter 290. No changes were made as a result of these comments.

Comment

One individual requested adding "sprinkler system" in the definition of "Irrigation services" in §344.1(20).

Response

The commission responds that including "sprinkler system" will enhance compliance with §344.70. In response to comments, the definition of "Irrigation system" in §344.1(21) has been revised to state, "This term includes sprinklers and sprinkler systems used for irrigation."

Comment

MasterScapes and one individual questioned what role the water purveyor and the city would play in enforcement and supporting the rules.

Response

The commission responds that the language in the revised §344.24 clarifies that a local jurisdiction with a population of 20,000 or more is required to adopt a local landscape irrigation ordinance that requires irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. The local jurisdiction, including water purveyors and city governments, will be responsible for ensuring compliance with their ordinances. The commission's staff would support the local jurisdiction in program development, implementation, and enforcement. No changes were made as a result of these comments.

Comment

Texas Irrigation Supply supported increased enforcement of existing rules.

Response

The commission responds that the language in §344.24 will enhance enforcement by clarifying the requirement for local jurisdictions to adopt a landscape irrigation ordinance. No changes were made as a result of this comment.

Comment

The TNLA expressed concern about a lack of licensed inspectors.

Response

The commission responds that the local jurisdictions continue to have jurisdiction over the landscape irrigation inspector program. The commission's staff can support the local jurisdiction in program development, implementation, and enforcement. No changes were made as a result of this comment.

Comment

One individual commented that the wording in §344.24(c) should be consistent with HB 1656 and to remove confusion from the phrase "if a municipality."

Response

The commission agrees with this comment and has removed the words "if a municipality" to clarify this requirement.

Comment

Christian Irrigation commented that the wording concerning on-site supervision needed to be specific, as some cities interpreted the rule to require a licensed irrigator to always be on the work site.

Response

The commission responds that the language in §344.30(b) is clear in that a licensed irrigation technician must be under the supervision of the licensed irrigator. This language allows for the licensed irrigator to supervise more than one licensed technician. Local jurisdictions can adopt local rules that are more stringent than TCEQ requirements. No changes to the revisions were made as a result of this comment.

Comment

One individual commented that the role of an irrigation technician should be clarified in §§344.1, 344.30(b)(2), 344.35(d)(10), and 344.36(a)(3), to say that they cannot sell, design, or consult as part of the irrigation services they provide.

Response

The commission responds that the amended definition of "Irrigation services" in §344.1(20) adds "selling" to the list of services included in this term. The role of an irrigation technician is defined in §344.1(22) and is limited to performing irrigation services under the supervision of a licensed irrigator. The language in §344.30(b) is clear in that a licensed irrigation technician must be under the supervision of the licensed irrigator. Section 344.36(a) clarifies that irrigation technicians are required to work under the supervision of a licensed irrigator. In addition, §344.36(d) includes the requirement that an irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services. No changes were made as a result of this comment.

Comment

Bac-Flo Unlimited, Inc commented that drip irrigation is being sold that has root killer embedded into the piping.

Response

The commission responds that root killer in drip irrigation is among the many hazards posed to the water supply by irrigation systems. This supports the current requirements for backflow prevention. No changes were made as a result of this comment.

Comment

Bac-Flo Unlimited, Inc listed several documented cases of cross connection contamination related events in San Antonio.

Response

The commission responds that no changes were made as a result of this comment. The examples provided are inconclusive or dated and do not support a change.

Comment

Bac-Flo Unlimited, Inc. and Studio 16:19 commented that the commission should develop an education process about landscape irrigation systems and their associated hazards.

Response

The commission responds that these comments are not in the scope of the current rule revisions but agrees that education on landscape irrigation systems is necessary to facilitate compliance and safety in the irrigation industry. Information on the revised rules will be incorporated into outreach and other edu-

educational opportunities to facilitate implementation. No changes were made as a result of these comments.

Comment

Barron Irrigation Repair, LLC, Repair Masters Sprinkler Repair LLC, RW Long Inc, and one individual commented that the handles on double-check valve assemblies shut-off valves should be better constructed. Repair Masters Sprinkler Repair, LLC and one individual expressed concern that the double-check valve assembly shut-off valve handles rust easily. Barron Irrigation Repair, LLC asked the TCEQ to encourage cities to require all backflow devices be equipped with stainless steel handles.

Response

The commission responds that the requirements in revised §344.50, pertaining to the appropriate amount of clearance around the assembly to allow for testing and repair help prevent rust and corrosion by creating space for collected water to drain. Backflow prevention assemblies with stainless steel handles are available for purchase as necessary. No change was made as a result of these comments.

Comment

City of Frisco, Irrigation Supply Inc, MasterScapes, Studio 16:19, Terry's Lawn Care, Wylie, and three individuals commented that they felt the rule revisions would increase the end costs to the customers due to the cost of backflow assembly replacements. Andy's Sprinkler and Drainage, City of Denton, City of Frisco, and two individuals added that they believe the increase in backflow assembly related costs would lead to customers seeking out non-licensed individuals to perform irrigation work illegally. Coleman's Lawn Care stated that an increase in costs would lead to a rise in non-compliance.

Response

The commission responds that the adopted revisions do not classify all irrigation systems as health hazards and do not require the replacement of existing backflow assemblies. No changes were made as a result of these comments.

Comment

DIA commented that they agreed with the revision to change the wording for "backflow prevention device" to "backflow prevention assembly."

Response

The commission acknowledges this comment.

Comment

MasterScapes requested clarification on the use of Pressure Vacuum Breakers (PVBs) in place of Reduced Pressure Principle Backflow Prevention Devices (RPs).

Response

The commission responds that PVB backflow prevention assemblies are an acceptable form of backflow prevention if installed under the correct hydraulic conditions (no backpressure). No changes were made as a result of this comment.

Comment

TNLA commented that the TCEQ should acknowledge that the commission is prepared to allow any installation method verbally or visually represented on installation guidelines.

Response

The commission responds that §344.50 requires the backflow prevention assembly to be installed per manufacturer's recommendations. No changes were made as a result of this comment.

Comment

Texas Outdoors commented that these rules would allow the general public to understand that there is a risk to the water supply from each landscape irrigation system.

Response

The commission agrees with this comment. No changes were made as a result of this comment.

Comment

One individual commented that §344.50(a) should be revised to indicate that all backflow prevention assemblies shall be installed, maintained, and tested according to manufacturer's recommendations.

Response

The commission responds that the testing requirements are listed in §344.50(c) and (d) and will create a conflict if the wording is changed to "tested according to manufacturer's recommendations." No changes were made as a result of this comment.

Comment

Accurate and Accountable Backflow, Classic Backflow, LLC, Kalan Backflow Service, Tomball ISD, Wylie, and two individuals expressed approval of the use of SVBs over AVBs.

Response

The commission acknowledges these comments.

Comment

DIA and TXIA commented that they were against the use of SVBs over AVBs.

Response

The commission responds that information received during the stakeholder process as well as from industry subject matter experts did not support the use of AVBs as they were not practical to be used on an irrigation system. Primarily, the prevalence of check valves in modern sprinkler heads prevent the use of AVBs. SVBs provide the irrigation industry an additional tool to use as backflow prevention on landscape irrigation systems. No changes were made as a result of these comments.

Comment

Tomball ISD commented that SVBs could be used in areas subject to freeze damage to mitigate the risk to landscape irrigation systems from frozen double check valve assemblies.

Response

The commission responds that SVBs are included for use as appropriate backflow prevention in the revised rules. No changes were made as a result of this comment.

Comment

An individual commented that §344.50(b)(4) should be revised to remove the word "in."

Response

The commission responds that this typographical error will be corrected by removing the word "in."

Comments

Accurate and Accountable Backflow, Kalan Backflow Service, and O'Neill & Dunbar, Inc. commented that double check valve assemblies should be eliminated.

Studio 16:19, SPIA, Texas Irrigation Supply, Tomball ISD, and Town of Prosper commented that double check valve assemblies should be limited, but not eliminated.

Austin Water SSD, Christian Irrigation, City of Allen, City of Frisco, DIA, Express Lawn Sprinklers LLC, TAB, TXIA, Texas Star, Wylie, and four individuals commented that double check valve assemblies should not be eliminated.

Frisco ISD and two individuals commented that there should be a procedure for grandfathering replacement of double check valve assemblies.

Response

The commission responds that the revised rules do not support limiting or eliminating the use of double check valve assemblies. The requirement for local jurisdictions with a population of 20,000 or more to adopt a landscape irrigation ordinance will provide local jurisdictions the opportunity to govern the use of double check valve assemblies and regulate the testing frequency. No changes were made as a result of these comments.

Comments

Andy's Sprinkler and Drainage, Coleman's Lawn Care, Express Lawn Sprinklers, MasterScapes, SPIA, and one individual expressed concern about double check valve assemblies being damaged if required to be installed above ground.

Andy's Sprinkler and Drainage, Christian Irrigation, City of Allen, MasterScapes, and one individual commented that requiring backflow prevention devices to be installed above ground would be ugly or unsightly.

Response

The commission responds that the requirements in §344.50 require the backflow prevention assembly to be installed per manufacturer's recommendations. Aesthetics of the system are beyond the scope of this rule revision. No changes were made as a result of these comments.

Comments

MasterScapes expressed concern that the commission was not requiring testing on double check valve assemblies when the commission is concerned about safety.

Repair Masters Sprinkler Repair, LLC and one individual commented that double check valve assemblies should be tested annually after being relocated or repaired.

Response

The commission responds that the testing requirements for all backflow prevention assemblies was increased to require testing upon repair, replacement, or relocation, in addition to installation. The requirements in §344.24 support a local jurisdiction that wants to implement a more stringent testing frequency. No changes were made as a result of these comments.

Comment

City of Allen, DIA, Express Lawn Sprinklers LLC, Kalan Backflow Service, TXIA, and Wylie commented that all in-line filters and strainers, including y-type filters, should not be used and are not necessary.

Response

The commission responds that the rule revisions do not require any type of in-line filter on irrigation systems. No changes were made as a result of these comments.

Comment

One individual submitted a comment requesting to add a requirement to §344.50(d) to state that "the pit or vault shall provide ample drainage so that the backflow prevention assembly is never submerged in water which could cause a cross-connection."

Response

The commission responds that the installation of the backflow prevention assembly is covered in §344.50. No changes were made as a result of this comment.

Comments

2greenirrigation, Accurate And Accountable Backflow, Austin Water, C2 Backflow Services, LLC, Christian Irrigation, City of Allen, City of Frisco, City of Saginaw, Classic Backflow, Conserva Irrigation, Greg's Sprinkler Works, Kalan Backflow Service, Longhorn, Inc, MasterScapes, Repair Masters Sprinkler Repair, LLC, Terry's Lawn Care, TAB, TXIA, Tomball ISD, Town of Prosper, and five individuals commented that backflow prevention devices need periodic testing.

Wylie and three individuals commented that backflow prevention assemblies need to be tested after repair, replacement, or relocation.

Bac-Flow Unlimited, Inc commented that backflow prevention devices need annual testing and maintenance.

DIA commented that the commission should research a minimum testing frequency.

TNLA commented that backflow prevention assemblies on systems designated as health hazards require annual testing.

Response

The commission responds that frequency of testing of a backflow prevention assembly is based on the degree of hazard posed by the irrigation system. Those backflow prevention assemblies on irrigation systems classified as health hazards must be tested annually. For all other irrigation systems, there was not a conclusive demonstration of the need for a specific ongoing testing frequency. The requirements in §344.24 allow a local jurisdiction that wants to implement a more stringent testing frequency. No changes were made as a result of these comments.

Comments

Andy's Sprinkler and Drainage, MasterScapes, Studio 16:19, and one individual commented that reclassifying all landscape irrigation systems as health hazards would require the use of RPs or reduced pressure backflow assembly.

Two individuals commented that they were in favor of the use of RPs or reduced pressure backflow assemblies as a result of reclassifying all landscape irrigation systems as health hazards.

Response

The commission responds that the rule revisions do not classify all irrigation systems as health hazards or require the use of RPs or another appropriate backflow prevention assembly. Information provided during the stakeholder meetings and the comment period did not support classifying all irrigation systems as health hazards. No changes were made as a result of these comments.

Comment

One individual commented that backflow prevention assembly test reports (instead of only the results) should be submitted to the water purveyor within 10 days of testing.

Response

The commission responds that §344.52(c) requires the test report to be submitted to the water purveyor within 10 days. No changes were made as a result of this comment.

Comments

Irri-Light and one individual commented that the irrigation plan must be on the job site. Irri-Light also requested that rules be made to require all irrigation designers walk properties they design.

Response

The commission responds that the irrigation plan must be on the job site under §344.61(a). The commission further responds that placing requirements for individuals not licensed by the TCEQ is beyond the scope of the Chapter 344 regulations. No changes were made in response to these comments.

Comment

One individual commented that the requirement in §344.61(a) should continue for "a paper or electronic copy of the irrigation plan" to be kept on site.

Response

The commission responds that to provide for possible alternate forms of the irrigation plan in the future, it is necessary to remove the limiting options of paper or electronic copies of the irrigation plan. No changes were made as a result of this comment.

Comment

One individual commented that the term "device" be replaced with "assembly", as included in the petitioner's recommendation, in §344.62(h) and (k).

Response

The commission responds that to be consistent with the intended revisions already made throughout the rest of the chapter, §344.62(h) and (k) have been modified to change "device" to "assembly."

SUBCHAPTER A. DEFINITIONS

30 TAC §344.1

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations;

Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Operations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.1. Definitions.

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

(1) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(2) As-built drawing--The final irrigation plan produced at the completion of an irrigation system installation and provided to the irrigation system's owner or the owner's representative. The as-built drawing(s) will reflect all changes made to the original irrigation plan and/or specifications during the construction process and show all aspects of the irrigation system including the dimensions, geometry, and location of all elements of the irrigation system. May be referred to as "record drawings" or "as-builts."

(3) Backflow prevention--The prevention of the reversal of flow, due to back siphonage or backpressure, of nonpotable water from an irrigation system into the potable water supply.

(4) Backflow prevention assembly--A mechanical assembly used to prevent backflow into a potable water system. The type of assembly used is based on the degree of hazard (health hazard or non-health hazard) and hydraulic conditions.

(5) Completion of irrigation system installation--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

(6) Consulting--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

(7) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(8) Design--The act of determining the various elements of a landscape irrigation system that will include, but not limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulic calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(9) Design pressure--The pressure that is required for an emission device to operate properly and in conjunction with the head-to-head spacing requirement. Design pressure is the sum of the minimum operating pressure of an emission device to the total of all pressure losses accumulated from the emission device to the water source.

(10) Double Check Valve Assembly--An assembly that is composed of two independently acting, check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) Emission device--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) Employed--The state of being engaged or hired to provide irrigation services and of being in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) Exempt business owner--an owner of a business who employs a licensed irrigator to supervise the irrigation services performed by the business as referenced in Texas Occupations Code, Chapter 1903.

(14) Graywater--wastewater from showers, bathtubs, handwashing lavatories, sinks that are used for disposal of household or domestic products, sinks that are not used for food preparation or disposal, and clothes-washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(15) Head-to-head spacing--The spacing of emission devices such that the distance between them is within the manufacturer's published radius range and the water spray reaches from device to device. A deviation of 10% or less is acceptable.

(16) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(17) Hydraulics--The science of dynamic and static water; the mathematical computation of pressure losses and/or pressure requirements of an irrigation system.

(18) Irrigation inspector--A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this ti-

tle (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector.

(19) Irrigation plan--A scaled drawing of a new landscape irrigation system to be installed. The irrigation plan shall meet all the requirements in §§344.60 - 344.65 of this title (relating to Water Conservation; Minimum Standards for the Design of the Irrigation Plan; Minimum Design and Installation Requirements; Completion of Irrigation System Installation; Maintenance, Alteration, Repair, or Service of Irrigation Systems; and Reclaimed Water) and is provided as an as-built drawing to the owner or owner's representative upon completion of the irrigation system installation.

(20) Irrigation services--All activities involving an irrigation system including, selling, designing, installing, maintaining, altering, repairing, servicing, permitting, consulting services, or connecting an irrigation system to a water supply.

(21) Irrigation system--A system permanently installed on a site and that is composed of an assembly of component parts for the controlled distribution and conservation of water to irrigate, reduce dust, and control erosion in any type of landscape vegetation in any location. This term includes sprinklers and sprinkler systems used for irrigation. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) Irrigation technician--A person who works under the supervision of a licensed irrigator to perform irrigation services including the connection of an irrigation system to a private or public, raw or potable water supply system or any other water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(23) Irrigation zone--A subdivision of an irrigation system with a matched precipitation rate based on plant type (turf, shrubs, or trees), microclimate (sun/shade ratio), topographic features, soil type (sand, loam, clay, or combination), and hydrological control.

(24) Irrigator--A person who performs irrigation services and/or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(25) Irrigator-in-Charge--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) Landscape irrigation--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(27) License--An occupational license that is issued by the commission under Chapter 30 of this title (relating to Occupational Licenses and Registrations) to an individual that authorizes the individual to engage in an activity that is covered by this chapter.

(28) Mainline--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) Maintenance checklist--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or

moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) Major maintenance, alteration, repair, or service--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(31) Master valve--A control valve located after the backflow prevention assembly that controls the flow of water to the irrigation system mainline.

(32) Matched precipitation rate--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate

(33) New installation--An irrigation system installed at a location where one did not previously exist or is a complete replacement of an existing irrigation system.

(34) Non-health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard but will constitute a nuisance or be aesthetically objectionable if introduced into the public water supply.

(35) Non-potable water--Water that is not suitable for human consumption. Non-potable water sources include, but are not limited to, irrigation systems, lakes, ponds, streams, gray water, water condensate from cooling towers, reclaimed water, and harvested rainwater.

(36) Pass-through contract--A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services. A pass-through contract is also referred to as a sub-contract.

(37) Potable water--Water that is suitable for human consumption and meets the definition of drinking water in §290.38(23) of this title (relating to Definitions)).

(38) Pressure Vacuum Breaker--An assembly that contains an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

(39) Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

(40) Records of landscape irrigation activities--The irrigation plans, contracts, warranty information, invoices, copies of permits, and all other documents that relate to irrigation services.

(41) Reduced Pressure Principle Backflow Prevention Assembly--An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

(42) Static water pressure--The pressure of water when it is not moving. Generally, this is the pressure available to the irrigation system.

(43) Supervision--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local and state requirements. Also performed by a licensed irrigation technician who is working under the direction of a licensed irrigator to perform irrigation services.

(44) Temporary Irrigation System - A temporarily installed, above ground system of pipes and component parts used to distribute water to the landscaping of a site for the establishment of plant growth, reduction of dust, and erosion control. Temporary irrigation systems must meet the requirements in §344.66 of this title (relating to Temporary Irrigation Systems).

(45) Water conservation--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(46) Zone flow--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(47) Zone valve--An automatic valve that controls a single zone of a landscape irrigation system.

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 July 6, 2020.

TRD-202002732

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 26, 2020

Proposal publication date: January 31, 2020

For further information, please call: (512) 239-6087



SUBCHAPTER B. STANDARDS OF CONDUCT FOR IRRIGATORS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

30 TAC §§344.20 - 344.22, 344.24

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning

Irrigation Systems. The amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendments are adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.24. Local Regulation and Inspection.

(a) Where any city, town, county, water district, other political subdivision of the state, or public water supplier requires licensed irrigators, irrigation technicians, or irrigation inspectors to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory the licensed irrigator, irrigation technician, or irrigation inspector shall comply with such requirements, ordinances, and regulations.

(b) Any city, town, county, water district, other political subdivision of the state, or public water supplier that is not required to adopt rules or ordinances regulating landscape irrigation may adopt a landscape irrigation program by ordinance or rule and may be responsible for inspection of irrigation systems on sites that are connected to its public water supply system. Any rule or ordinance adopted to regulate landscape irrigation shall be at least as stringent as the requirements in this chapter.

(c) Municipalities with a population of 20,000 or more shall verify that the irrigator that designs and installs an irrigation system holds a valid irrigator's license and has obtained a permit before installing a system within its territorial limits or its extraterritorial jurisdiction. Inspectors must verify that the design and installation meet the requirements of this chapter and local ordinances or rules that do not conflict with this chapter, or that are more stringent than this chapter.

(d) A water district that chooses to implement a landscape irrigation program shall meet the program requirements in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on July 6, 2020.

TRD-202002733

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 26, 2020

Proposal publication date: January 31, 2020

For further information, please call: (512) 239-6087



SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §§344.30, 344.31, 344.33 - 344.38

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.30. License Required.

(a) An irrigator is an individual who:

(1) performs irrigation services including the connection of such system to any water supply;

(2) is not an exempt business owner and advertises or represents to anyone that the individual can perform irrigation services; and

(3) is required to hold a valid irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(b) An irrigation technician is an individual who:

(1) connects an irrigation system to a water supply;

(2) under the supervision of a licensed irrigator, installs, maintains, alters, repairs, or services a landscape irrigation system;

(3) represents to anyone that the individual can perform any or all of these functions; and

(4) is required to hold a valid irrigation technician license issued under Chapter 30 of this title.

(c) All irrigators and irrigation technicians shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

(d) An individual who inspects irrigation systems and enforces a municipality's landscape irrigation ordinance must:

- (1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or
- (2) hold a valid plumbing inspector license.

(e) An individual who inspects irrigation systems and enforces a water district's rules related to landscape irrigation systems must:

- (1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or
- (2) hold a valid plumbing inspector license; or
- (3) be the district's operator; or
- (4) be employed by another regulatory authority with jurisdiction over landscape irrigation and hold the appropriate license.

(f) An inspector shall comply with the rules contained in this chapter when performing any of the functions listed in this section.

(g) A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if they are performing irrigation work in a building or on a premise owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in §344.62(b), (c), (g), (j), and (k) of this title (relating to Minimum Design and Installation Requirements) concerning spacing; water pressure; spraying water over impervious materials; rain or moisture shut-off devices or other technology; and isolation valve. Municipalities or water districts may adopt more stringent requirements for a home or property owner who installs an irrigation system.

§344.35. *Duties and Responsibilities of Irrigators.*

(a) An irrigator shall comply with the rules contained in this chapter when performing any or all of the functions described in this section.

(b) An irrigator who performs work for an entity or for an exempt business owner who performs or offers to perform irrigation services shall be knowledgeable of and responsible for all permits, contracts, agreements, advertising, and other irrigation services secured and performed using the irrigator's license.

(c) A licensed irrigator who is employed by an exempt business owner and designated as the irrigator-in-charge shall supervise all irrigation services of the business, in accordance with this chapter.

(d) A licensed irrigator is responsible for:

- (1) using the seal in accordance with this chapter;
- (2) obtaining all permits and inspections required to install an irrigation system;
- (3) complying with local regulations;
- (4) determining the appropriate backflow prevention method for each irrigation system installation and installing the backflow prevention assembly correctly;
- (5) maintaining landscape irrigation systems records;
- (6) conserving water;

(7) developing and following an irrigation plan for each new irrigation system;

(8) designing an irrigation system that complies with the requirements of this chapter;

(9) providing on-site supervision of the installation of irrigation systems;

(10) providing supervision to an irrigation technician who is conducting irrigation services;

(11) completing the irrigation system including the final "walk through," completing the maintenance checklist, placing a permanent sticker on the controller or on the maintenance checklist if the irrigation system does not have an automatic controller, and providing a copy of the design plan;

(12) conducting irrigation services in compliance with the requirements of this chapter;

(13) providing advertisements, contracts, and warranties that comply with the requirements of this chapter; and

(14) installing an irrigation system that complies with the requirements of this chapter.

§344.36. *Duties and Responsibilities of Irrigation Technicians.*

(a) A licensed irrigation technician under the supervision of a licensed irrigator, is responsible for:

(1) connecting an irrigation system to a water supply;

(2) installing a backflow prevention assembly pursuant to §344.50 of this title (relating to Backflow Prevention Methods);

(3) conducting irrigation services including maintaining, altering, repairing, servicing, or directing the installation of irrigation systems; and

(4) conducting the final walk through in compliance with the requirements in §344.63 of this title (relating to Completion of Irrigation System Installation).

(b) If an irrigation technician connects an irrigation system to a potable water supply, the connection and installation of the backflow prevention assembly must be as indicated on the site irrigation plan or as directed by the licensed irrigator and documented on the site irrigation plan.

(c) An irrigation technician, under the supervision of a licensed irrigator, is responsible for:

(1) connecting an irrigation system to a water supply; and

(2) providing on-site supervision of the installation, maintenance, alteration, repair, service of an irrigation system including the final walk through with the irrigation system owner or owner's representative to explain the maintenance and operation of the irrigation system.

(d) An irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

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 July 6, 2020.

TRD-202002734

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 26, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 239-6087



SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §344.32

Statutory Authority

The repeal of this section is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The repeal of this section is adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The repeal of this section is adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the repeal of this section is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted repealed section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

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 July 6, 2020.

TRD-202002735
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 26, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 239-6087



SUBCHAPTER D. LICENSED IRRIGATOR SEAL

30 TAC §§344.30, 344.42, 344.43

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

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 July 6, 2020.

TRD-202002736
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 26, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 239-6087



SUBCHAPTER E. BACKFLOW PREVENTION AND CROSS-CONNECTIONS

30 TAC §§344.50 - 344.52

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees,

Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.50. *Backflow Prevention Methods.*

(a) All backflow prevention assemblies installed per this chapter shall be installed according to manufacturer's recommendations and provided with sufficient clearance to facilitate testing.

(b) If conditions that present a health hazard exist, one of the following types of backflow prevention shall be used.

(1) An air gap may be used if installed per the definition of air gap in §344.1(1) of this title (relating to Definitions).

(2) Reduced pressure principle backflow prevention assemblies may be used if installed per subsection (a) of this section and:

(A) the assembly is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

(B) drainage is provided for any water that may be discharged through the relief valve.

(3) Pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition; and

(B) the assembly is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Spill-resistant pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition; and

(B) the assembly is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(c) If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the assembly is tested upon installation and:

(1) a local regulatory authority does not prohibit the use of a double check valve; and

(2) test cocks are used for testing only.

(d) Double check valve assemblies installed below ground shall meet the following installation requirements:

(1) test cocks shall be plugged, except when the double check valve is being tested;

(2) test cock plugs shall be threaded, water-tight, and made of non-ferrous material; and

(3) there shall be a clearance all the way around the assembly to allow space for testing and repair.

(e) At a minimum, all backflow prevention assemblies shall be tested by a licensed backflow prevention assembly tester upon installation, repair, replacement, or relocation. Those backflow prevention assemblies used in irrigation systems designated as health hazards shall be tested annually.

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 July 6, 2020.

TRD-202002737

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 26, 2020

Proposal publication date: January 31, 2020

For further information, please call: (512) 239-6087



SUBCHAPTER F. STANDARDS FOR DESIGNING, INSTALLING, AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

30 TAC §§344.60 - 344.66

Statutory Authority

These amendments and new section are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments and new section are also adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Stan-

dards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments and new section are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments and new section are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments and new section implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.62. Minimum Design and Installation Requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure. In no instance shall the spacing exceed plus or minus 10% of the manufacturer's published radius or spacing of the device(s).

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters.

(3) Pop-up spray heads or rotary sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar. Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) Water pressure. Emission devices must be installed to operate at the optimum or recommended sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. If an optimum or recommended pressure is not published, then the emission devices must be installed to operate at not below the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Polyvinyl chloride (PVC) piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second.

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water on or over any surfaces made of impervious material including but not limited to concrete, asphalt, brick, wood, stones set with mortar, walls, fences, sidewalks, and streets.

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention assembly on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Loving, Winkler, Ward, Reeves, Ector, Crane and Pecos Counties are excluded from this requirement.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention assembly.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the topmost pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan/as-built drawing. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan/as-built drawing and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the topmost pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a valve box with a colored-coded purple lid or cover and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) A licensed irrigator or licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

(p) Valve boxes. A valve box shall be used as a durable, rigid enclosure for valves and/or any other irrigation system components that require subsurface protection.

§344.65. Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

- (1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;
- (2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;
- (3) the irrigation system is installed using purple components;
- (4) the domestic potable water line providing water to the site is connected using an air gap or a reduced pressure principle backflow prevention assembly in accordance with §290.47(f) of this title (relating to Appendices);
- (5) a minimum of an eight-inch by eight-inch sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER - DO NOT DRINK" and "AGUA DE RECUPERACIÓN - NO BEBER"; and
- (6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the water purveyor.

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 July 6, 2020.

TRD-202002738
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 26, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 239-6087



**SUBCHAPTER G. ADVERTISING,
CONTRACT, AND WARRANTY**

30 TAC §§344.70 - 344.72

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

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 July 6, 2020.

TRD-202002739
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 26, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 239-6087



**SUBCHAPTER H. IRRIGATOR ADVISORY
COUNCIL**

30 TAC §344.80

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations;

Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations §1903.158, concerning Per Diem; Reimbursement; Texas Occupations, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

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 July 6, 2020.

TRD-202002740

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 26, 2020

Proposal publication date: January 31, 2020

For further information, please call: (512) 239-6087



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.613, §51.614

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted new §51.613, concerning the Urban Outreach Advisory Committee, and §51.614, concerning the Accessibility Advisory Committee, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1169). The rules will not be republished.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

New §51.613 creates the Urban Outreach Advisory Committee, provides for the membership and focus of the committee, and establishes an expiration date (which is required by statute). The focus of the committee will be the range of department programs and initiatives affecting urban and near-urban populations, the demographic variety of urban and near-urban populations in the state, and the conservation and management organizations that serve urban and near-urban populations.

A majority of Texans now live in or near urban areas, making it more important than ever that the department be aware of and include urban and near-urban populations in developing the strategies to execute the department's mission to protect and conserve our natural and cultural heritage. Therefore, the Commission has determined that it is prudent to establish an urban outreach advisory committee composed of a cross-section of persons who live or work in or near urban areas to provide the department with informed assistance in furtherance of the department's goals with respect to impacts on and contributions from urban and near-urban populations in the state.

New §51.614 creates the Accessibility Advisory Committee, provides for the membership and focus of the committee and establishes an expiration date (which is required by statute). The committee will be composed of a range of persons affected by disabilities and/or special needs who are interested in issues of accessibility to department sites, facilities, or programs, as well as conservation and management organizations with an interest in or focus on advocacy for disabled persons. The focus of the committee will be the interests of persons with disabilities and/or special needs in the context of department operations and initiatives.

The department expects this committee to assist in enabling department facilities and programs to comply with legal requirements affecting persons with disabilities. Further, the department expects the committee to facilitate meaningful engagement and outreach to the community of persons with disabilities and their advocates. Through the committee, the department expects to gather information and gain understanding of the unique challenges faced by the members of that community in order to make the department's sites, facilities, services, and programs as accessible as possible.

The department received two comments opposing adoption of the rules. One commenter opposed adoption and stated incredulity that mentally unstable individuals would be permitted to establish department rules. The department disagrees with the comment and responds that the advisory committees have

no legal authority to engage in rulemaking. No changes were made as a result of the comment.

The department received eight comments supporting adoption of the rules.

The new sections are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §2110.005 and §2110.008.

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 July 6, 2020.

TRD-202002760

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: July 26, 2020

Proposal publication date: February 21, 2020

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.3, §65.24

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020 adopted amendments to §65.3 and §65.24, concerning the Statewide Hunting Proclamation, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1176).

The department is in the process of automating the application and issuance procedures for pronghorn antelope and antlerless mule deer permits, which has until this point been manual. To do so efficiently and cost-effectively, the department has determined that those processes should first be defined by rule in order to provide a definitive, permanent structure before programming begins.

The amendment to §65.3, concerning Definitions, adds definitions for "herd unit," "buck pronghorn," and "pronghorn." "Herd unit" is defined as "a discrete geographical area designated by the department for the purpose of population monitoring and permit issuance with respect to pronghorn," which is necessary to create an unambiguous meaning for the basic management context utilized by the department for pronghorn. The amendment also defines "pronghorn" as "pronghorn antelope (*Antilocarpa americana*)." Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species; however, the animal is not a true antelope. Additionally, the department believes it is less cumbersome to simply refer to the animal as a pronghorn. Therefore, the definition is necessary to establish that the word "pronghorn" means the pronghorn antelope established by statute as a game animal. The amendment also defines "buck pronghorn" as "a pronghorn with black cheek patches below the ears," which is necessary because certain harvest rules in the subchapter have a narrow application to male pronghorn (bucks), which are distinguishable by their unique markings. Finally, the amendment relocates the

definition for "pre-charged pneumatic" in order to preserve the alphabetic order of the section.

The amendment to §65.24, concerning Permits, sets forth the application requirements and conditions for the issuance of pronghorn and antlerless mule deer permits. The amendment allows for multiple landowners to combine multiple tracts of land to create an aggregate acreage for permit issuance and utilization. By allowing acreages to be combined, the department hopes to increase hunting opportunity and encourage resource management; however, because mule deer are very mobile and can travel substantial distances within their home ranges, the department employs a conservative harvest philosophy for the doe segment of the mule deer population. In order to ensure that harvest is not concentrated to a deleterious extent in one or two areas, the rule requires tracts of land within an aggregate acreage to be contiguous, which is necessary to distribute hunting pressure and harvest across a geographical range. New subsection (d) requires all permit applications to be submitted electronically and establish application deadlines. The purpose of automation is to relieve staff of burdensome, time-consuming administrative labor, which allows more time that can be devoted to other job duties. Therefore, use of the automated system must be mandatory in order to achieve maximal efficiency. Additionally, deadlines must be established in order to establish smooth workflows.

New subsection (e) requires landowners who receive permits to maintain a daily harvest log and prescribes the information that must be contained in the daily harvest log (name of hunter, driver's license or customer number, date of kill, location of kill). A daily harvest log is necessary to allow the department to verify that permits are being lawfully utilized.

Finally, the amendment requires landowners to enter harvest data by a deadline following the end of permit validity. The submitted data is used by the department to inform and guide future management decisions.

The department received three comments opposing adoption of the proposed amendments. All three commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that many landowners in the Panhandle are elderly and do not use computers, so landowners' agents should be allowed to act on their behalf. The department agrees and responds the rules do not prohibit a landowner's authorized agent from completing the application and reporting processes. No changes were made as a result of the comment.

One commenter opposed adoption and stated permits outside of the experimental zone are difficult to obtain and should be made available to hunters. The department disagrees with the comment and responds that until recently, all pronghorn hunting in Texas was by permits issued to landowners who in turn provided the permits to hunters. The purpose of the experimental season is to test and assess a limited system of buck-only permit issuance by the department directly to hunters in locations where biological parameters allow it; thus, hunting is allowed outside of the experimental zones, but permits to hunt on those properties must be obtained from the landowner, which is by design. No changes were made as a result of the comment.

One commenter opposed adoption and stated that requiring landowners to apply for permits online is a burden and creates a burden for landowners. The department disagrees with the

comment and responds that online application and reporting is more efficient, less burdensome, and less time consuming than manual systems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that crossbows should be included in the definition of lawful archery equipment. The department disagrees with the comment and responds that although crossbows are not designated as archery equipment, they are designated as a lawful means, and their inclusion or exclusion from the definition of lawful archery equipment is irrelevant. No changes were made as a result of the comment.

The department received 22 comments supporting adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The 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 July 6, 2020.

TRD-202002759

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2020

Proposal publication date: February 21, 2020

For further information, please call: (512) 389-4775



SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted amendments to §65.81 and §65.82, concerning Disease Detection and Response. Section 65.82, concerning Surveillance Zones; Restrictions, is adopted with changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2499). Section 65.81, concerning Containment Zones; Restrictions, is adopted without changes and will not be republished.

The change to 65.82 corrects two inadvertent typographical errors in paragraph (1)(E). The paragraph is titled "Containment Zone 5" and should be titled "Surveillance Zone 5." Additionally, the proposed rule referred to C.R. 433 in the boundary description of Surveillance Zone 5; however, the rule should refer to C.R. 443. The changes are nonsubstantive.

The amendments replace emergency rules affecting Subchapter B, Division 1 adopted on January 10, 2020 (45 TexReg 243), as well as to respond to additional detections of CWD in Medina and Kimble counties.

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD is confirmed, within which the possession and movement of live deer under department permits is restricted, and harvested deer are required to be presented at check stations to be tested for CWD. In 2016, those rules were modified (41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional Surveillance Zones (SZs) and an additional Containment Zone (CZ) in West Texas. The rules were amended again in 2017 in response to a subsequent positive test result in Medina County.

On December 18, 2019, the department received confirmation that a free ranging 5.5-year-old female white-tailed deer killed in Val Verde County had tested positive for CWD. Accordingly, the department adopted rules on an emergency basis to create a CZ and SZ in Val Verde County. The emergency rule has expired and this rulemaking replaces the temporary emergency provisions with a permanent provisions that will remain in place until such time as they may be repealed or altered.

On January 28, 2020, the department received confirmation that a 4.5-year-old male white-tailed deer and a 3.5-year-old female white-tailed deer killed in Medina County had tested positive for CWD. The location of the mortalities necessitates a conforming change to the boundaries of current CZ 3.

On February 26, 2020, the department received confirmation that a 5.5-year-old female white-tailed deer held in a deer breeding facility in Kimble County had tested positive for CWD. The proposed amendment to §65.80, concerning Surveillance Zones; Restrictions, would create new SZ 5 in response.

The amendment to §65.81, concerning Containment Zones; Restrictions, creates new CZ 4 in a portion of Val Verde County and slightly expand current CZ 3 in Medina and Uvalde counties. A CZ is a specific location in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable. With respect

to the CZ that would be established by this rulemaking, the department assumes the highest probability of additional detection exists within approximately a five-mile radius from the approximate location where CWD is detected in a free-ranging deer and within approximately a two-mile radius from the location where it has been detected within a captive population. Although the CZ designation imposes mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer, it is not necessary for hunters to be aware of or concerned with CZ boundaries, since the CZ is wholly within an SZ where mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer also apply. This rulemaking does not create a CZ in Kimble County for two reasons. First, the discovery occurred in a breeder deer facility, which is required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer, which is imperative for the control and management of CWD. Second, the facility where CWD was discovered is operating under a Texas Animal Health Commission herd plan, which restricts deer movement and requires CWD testing at an equal or higher level to what is required in a CZ.

The amendment to §65.82, concerning Surveillance Zones; Restrictions, creates new SZ 4 in a portion of Val Verde County surrounding proposed new CZ 4 and new SZ 5 in Kimble County. An SZ is a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. The SZ in Val Verde County represents an approximately 15-mile buffer around CZ 4; in Kimble County the buffer is approximately five miles because the detection occurred in a deer breeding facility (a confined herd).

Within CZs and SZs, the movement of live deer is restricted and presentation of harvested deer at department check stations is mandatory. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply to deer harvested within a CZ or SZ. The boundaries of proposed the new CZs and SZs have been tailored to as much as possible follow recognizable features such as roadways and power line rights-of-way, and county boundaries, and the department notes that any designation of a CZ or SZ is always accompanied by a robust public awareness effort.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.82. *Surveillance Zones; Restrictions.*

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

(B) Surveillance Zone 2. That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.

(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at U.S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along

the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E) Surveillance Zone 5: That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along on I.H. 10 to F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

(F) Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within a SZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within a SZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a SZ.

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ and designated as a:

(I) TC 1 breeding facility may:

(-a-) transfer to or receive breeder deer from any other deer breeding facility in this state that is authorized to transfer deer; and

(-b-) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(II) TC 2 breeding facility:

(-a-) may receive deer from any facility in the state that is authorized to transfer deer;

(-b-) may transfer deer to a breeding facility or release site that is within the same SZ; and

(-c-) is prohibited from transferring deer to any facility outside of the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(C) Breeder deer from a deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter.

(D) Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(E) Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility in a SZ must be released to the property for which the DMP is issued and may not be transferred anywhere for any purpose.

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 July 6, 2020.

TRD-202002762

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: July 26, 2020

Proposal publication date: April 17, 2020

For further information, please call: (512) 389-4775

◆ ◆ ◆
SUBCHAPTER N. MIGRATORY GAME BIRD
PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted amendments to §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1190). The rules will not be republished.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

The amendments specify the season dates and bag limits for the 2020-2021 migratory game bird seasons. The remainder of the amendments, with the exceptions addressed later in this preamble, retain the season structures and bag limits for all migratory game birds from last year and serve only to adjust the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The exceptions are as follows.

The amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, reduces the bag limit for scaup from three to one in compliance with the federal frameworks. The commission cannot modify or alter the mandates of the federal frameworks.

The amendment to §65.316, concerning Geese, opens the light and dark goose seasons in the Western Zone one week later than has been the case in the past and reduces the daily bag limit for light geese in both goose zones from 20 birds to 10 birds. The department has noticed a gradual shift in migration chronology in that part of the state, characterized by the later arrival of large numbers of geese in the Western Zone and believes that moving the opening date will result in greater hunter opportunity.

The amendment also necessitates a conforming change to the traditional opening day of the Light Goose Conservation Order as well. The bag limit reduction is necessitated by continuing concerns about long-term declines in wintering populations of light geese, especially along the Texas coast. Department data indicate that populations of wintering light geese in Texas have declined by over 80% since 1978, and although a variety of factors are believed to be responsible, primarily habitat loss, the department believes that a reduction in the daily bag limit is warranted.

The amendment to §65.319, concerning Gallinules, Rails, Snipe, and Woodcock, opens the season for snipe two weeks later than in years past. Hunter survey data indicate a preference for a later season, and the department does not believe that moving the opening date to a later time will result in negative population impacts.

The department received 47 comments opposing adoption of all or a portion of the proposed amendments. All 47 commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that dove season should not open on a weekday or otherwise indicated a preference for a specific opening date other than the earliest date possible under the federal frameworks. The department disagrees with the comment and responds that hunter and landowner surveys indicate a preference for the earliest opening date possible under the federal frameworks, even if it falls on a weekday. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the white-winged dove season in the South Zone should open concurrently with the season for mourning dove. The department disagrees with the comments and responds that hunter and landowner surveys indicate a preference for the Special White-winged Dove Season to begin on the earliest Saturday in September and encompass the first two weekends of September. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the bag limit for redheaded ducks should be higher. The department disagrees with the comment and responds that the bag limit for redheaded ducks as adopted is the maximum allowable under the federal frameworks. No changes were made as a result of the comments.

Thirteen commenters opposed the proposed decrease in the bag limit for scaup. The department disagrees with the comments and responds that the bag limit for scaup as adopted is the maximum allowable under the federal frameworks. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that duck season should extend into February. The department disagrees with the comments and responds that under the federal frameworks, duck seasons in Texas cannot extend beyond the last day of January. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the bag limit for pintail ducks should be increased. The department disagrees with the comments and responds that the bag limit for pintail as adopted is the maximum allowable under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that coot hunting should be allowed during the split in the duck season. The department disagrees with the comment and responds that the federal frameworks require all hunting of waterfowl to cease during season splits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for teal should be lowered to four. The department disagrees with the comment and responds that there is no biological information to suggest that the current bag limit for teal will or could result in negative impacts to the sustainability of the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that teal season should begin one week later. The department disagrees with the comment and responds that hunter surveys indicate a strong preference for a season that encompasses the last three weekends of September. No changes were made as a result of the comment.

One commenter opposed adoption and stated that moving dark goose seasons dates later in the year in the Western Zone will negatively impact goose hunting opportunity during the duck season. The department disagrees with the comments and responds that biological data indicate the season as adopted will result in greater hunter opportunity for the take of dark geese and that such opportunity was declining under the previous season chronology. No changes were made as a result of the comment.

One person opposed adoption and stated that a later season for dark geese will shorten the light goose conservation order. The department agrees that a later season for dark geese will shorten the light goose conservation order but maintains that the increase in hunter opportunity for dark geese will offset whatever limitations are created with respect to light geese. No changes were made as a result of the comment.

One commenter opposed adoption and stated that light geese populations are growing, so there is no need for a bag limit reduction. The department disagrees with the comment and responds that all populations of light geese are experiencing declines, but the regional populations that winter on the Texas coast have declined by over 80% since 1978. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because light geese populations are declining, the bag limit reduction won't accomplish anything. The department disagrees with the comment and responds that the bag limit reduction is a prudent measure to address population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit reduction is cosmetic because population declines are a result of habitat loss, not harvest. The department disagrees with the comment and responds that although habitat loss and degradation are believed to be the greatest contributors to the documented long-term population declines, a bag limit reduction is a prudent measure to address population declines. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be a split goose season with a bag limit of five birds. The department disagrees with the comments and responds that a split season would result in loss of hunting opportunity. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the Light Goose Conservation Order should be eliminated. The department disagrees with the comment and responds that the special conservation order is needed to protect Canadian breeding grounds from habitat destruction and subsequent severe population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be an additional late youth season for waterfowl. The department disagrees with the comment and responds that the federal frameworks provide for only two days of youth-only waterfowl hunting opportunity, which the department believes are most effective when utilized as an early season. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the bag limit for sandhill crane should be increased in Zone C. The department disagrees with the comments and responds that the bag limit for sandhill cranes in Zone C is the maximum allowable under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that a season for sandhill crane should be opened east of Houston. The department disagrees with the comment and responds that seasons for sandhill crane exist in all sections of the state where federal frameworks allow; however, the federal frameworks establish a closed area in the southeastern portion of the state. No changes were made as a result of the comment.

The department received 84 comments supporting adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The 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 July 6, 2020.

TRD-202002761

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2020

Proposal publication date: February 21, 2020

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

SUBCHAPTER C. ENERGY CONSERVATION DESIGN STANDARDS

34 TAC §19.32

The Comptroller of Public Accounts adopts amendments to §19.32, concerning energy and water conservation design standards, with changes to the proposed text as published in the May 29, 2020, issue of the *Texas Register* (45 TexReg 3613). The rule will be republished.

The amendments to §19.32 update the energy conservation design standards and water conservation design standards for new construction or major renovation of existing buildings in compliance with Government Code, §447.004, which requires the State Energy Conservation Office (SECO) to establish and publish mandatory energy and water conservation design standards for state buildings or major renovation projects and to review and update the standards biennially. The amendments also clarify that International Conservation Code means the International Energy Conservation Code (IECC).

One comment was received regarding these amendments,

Cyrus Reed with the Lone Star Chapter of the Sierra Club commented that ASHRAE has recently published an update to ASHRAE 90.1 - 2016, and SECO should instead adopt ASHRAE 90.1 - 2019 as the new code for state-funded construction. Additionally, SECO should consider an implementation date of January 1, 2021, rather than May 1, 2021, for the new energy and water conservation design standards. The comptroller declines to make the change to adopt ASHRAE 90.1 - 2019 instead of ASHRAE 90.1 - 2016 because the ASHRAE 90.1 - 2019 documentation is not yet fully developed; however, the comptroller agrees to make the change of the implementation date to January 1, 2021.

The amendment is adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendments implement Government Code, §447.004 regarding design standards.

§19.32. *Energy and Water Conservation Design Standards.*

(a) SECO adopts by reference the following minimum energy standards for state agencies and institutions of higher education:

(1) for any new construction or major renovation project, except low-rise residential buildings, with a design assignment made on or after January 1, 2021, the energy conservation design standard of the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society (IES) Standard 90.1-2016 Energy Standard for Buildings Except Low-Rise Residential Buildings, and any errata sheet for 90.1-2016 that is published by the ASHRAE Standards Committee or the 2018 International Energy Conservation Code (IECC) as published by the International Code Council (ICC), provided however the following buildings or structures are exempt from compliance with this section:

(A) a building or structure that is listed in the State or National Register of Historic Places;

(B) a building or structure that is designated as a historic property under local or state designation law or survey;

(C) a building or structure that is certified as a contributing resource with a National Register listed or locally designated historic district; or

(D) with an opinion or certification by the State Historic Preservation Officer or Keeper of the National Register of His-

toric Places, a building or structure that is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district;

(2) for any new construction or major renovation project of a low-rise residential building with a design assignment made on or after January 1, 2021, the residential chapter of the 2018 International Energy Conservation Code as published by the International Code Council.

(b) Effective January 1, 2021, SECO adopts by reference the "Water Conservation Design Standards for State Buildings and Institutions of Higher Education Facilities" prepared by SECO, dated April 2020, as the water conservation design standards for any new construction or major renovation project.

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 June 30, 2020.

TRD-202002681

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Effective date: July 20, 2020

Proposal publication date: May 29, 2020

For further information, please call: (512) 251-4792



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 the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 54, Special Programs. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept written comments regarding the review. Comments should be directed to Austin Kinghorn, Assistant Attorney General, General Counsel Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Austin.Kinghorn@oag.texas.gov.

Any proposed changes to these 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 30-day public comment period prior to final adoption.

TRD-202002767

Lesley French

General Counsel

Office of the Attorney General

Filed: July 6, 2020



Texas Parks and Wildlife Department

Title 31, Part 2

NOTICE OF INTENT TO REVIEW RULES

The Texas Parks and Wildlife Department files this notice of intention to review the following chapters of 31 TAC, Part 2:

Chapter 51. Executive.

Subchapter A. Procedures for the Adoption of Rules.

Subchapter B. Authority to Contract.

Subchapter C. Employee Fundraising and Sponsorships.

Subchapter D. Education.

Subchapter E. Sick Leave Pool.

Subchapter F. Vehicles.

Subchapter G. Nonprofit Organizations.

Subchapter H. General Plan for Prescribed Burning on TPWD Lands.

Subchapter I. Historically Underutilized Businesses.

Subchapter J. Contract Dispute Resolution.

Subchapter K. Disclosure of Customer Information.

Subchapter L. Vendor Dispute Resolution.

Subchapter M. Investment of Lifetime License Endowment.

Subchapter N. Employee Training.

Subchapter O. Advisory Committees.

Subchapter P. Official Corporate Partners.

Subchapter Q. Promotional Drawings.

Chapter 52. Stocking Policy.

Chapter 55. Law Enforcement.

Subchapter A. Proof of Residency Requirements.

Subchapter B. Seizure, Care and Disposition of Contraband.

Subchapter C. Deputy and Special Game Warden Commission.

Subchapter D. Operation Game Thief Fund.

Subchapter E. Show, Test, and Demonstration of Vessels.

Subchapter F. Floating Cabins.

Subchapter G. Boat Speed Limit and Buoy Standards.

Subchapter H. Party Boats.

Subchapter I. Disposition of Dangerous Wild Animals.

Subchapter J. Controlled Exotic Snakes.

Subchapter K. Interstate Wildlife Violator Compact.

Subchapter L. Marine Safety Enforcement--Training and Certification Standards.

Subchapter M. Mandatory Boating Incident Report.

Chapter 60. Maintenance Reviews.

Subchapter A. Maintenance Equipment Review.

Subchapter B. Maintenance Provider Review.

Chapter 61. Design and Construction.

Subchapter A. Contracts for Public Works.

Subchapter C. Boat Ramp Construction and Rehabilitation.

Subchapter E. Local Parks, Recreation Grant Program.

This review is pursuant to Government Code, §2001.039. The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review by the Parks and Wildlife Commission is scheduled for the commission meeting to be held in Austin, Texas on November 5, 2020.

Any questions or written comments pertaining to this notice of intent to review should be directed to Todd George, Assistant General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Any proposed changes to 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 30-day public comment period prior to final adoption or repeal by the commission.

TRD-202002758
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Filed: July 6, 2020



Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 804, Jobs and Education for Texans (JET) Grant Program, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. 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 TWC.

Comments on the proposed review may be submitted to TWCPolicy-Comments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*:

TRD-202002741
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Filed: July 6, 2020



The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. 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 TWC.

Comments on the proposed review may be submitted to TWCPolicy-Comments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*:

TRD-202002742

Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
Filed: July 6, 2020



The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 850, Vocational Rehabilitation Services Administrative Rules and Procedures, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. 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 TWC.

Comments on the proposed review may be submitted to TWCPolicy-Comments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*:

TRD-202002743
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Filed: July 6, 2020



The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 854, Business Enterprises of Texas, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. 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 TWC.

Comments on the proposed review may be submitted to TWCPolicy-Comments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*:

TRD-202002744
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Filed: July 6, 2020



The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 856, Vocational Rehabilitation Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. 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 TWC.

Comments on the proposed review may be submitted to TWCPolicy-Comments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*:

TRD-202002745

Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
Filed: July 6, 2020



The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 858, Vocational Rehabilitation Services Contract Management Requirement, in accordance with Texas Government Code §2001.039.

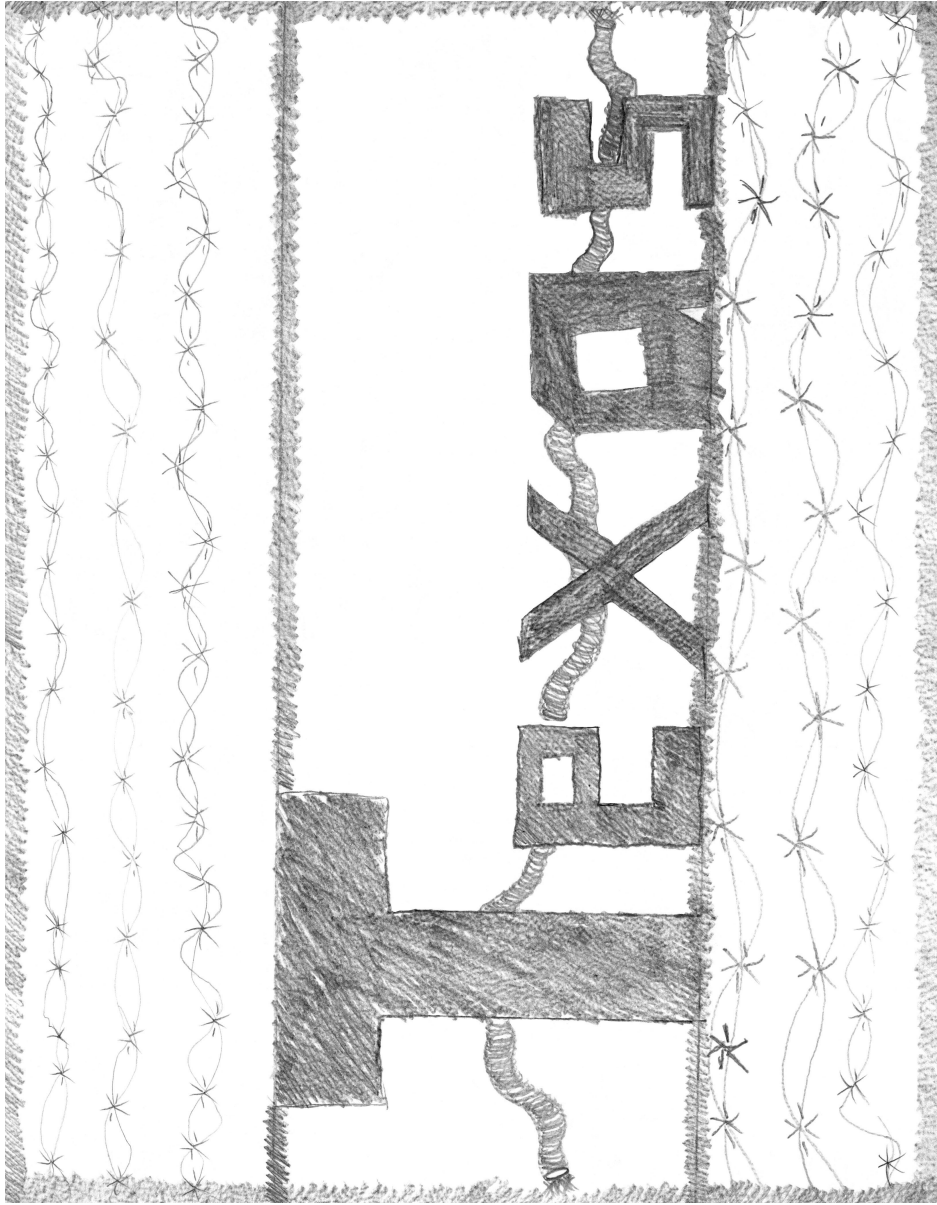
An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be

reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the proposed review may be submitted to *TWCPolicy-Comments@twc.state.tx.us*. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-202002746
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Filed: July 6, 2020





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

[Figure: 1 TAC §354.1753(e)(1)]

	[Innovative P4R Measure or Quality Improvement Collaborative Activity]	[P4P Measure]	[Newly Selected DY9-10 P4P Measure]
[DY9]	[100% RY3 reporting milestone]	[33% PY3 reporting milestone]	[16.5% baseline reporting milestone]
		[67% DY9 goal achievement milestone]	[16.5% PY3 reporting milestone]
			[67% DY9 goal achievement milestone]
[DY10]	[100% RY4 reporting milestone]	[33% PY4 reporting milestone]	[33% PY4 reporting milestone]
		[67% DY10 goal achievement milestone]	[67% DY10 goal achievement milestone]

Figure: 1 TAC §354.1753(e)(1)

	DY9	DY10
<u>Innovative Measure</u>	<u>100% RY3 reporting milestone</u>	<u>25% RY4 reporting milestone</u> <u>75% achievement milestone</u>
<u>P4P Measure - Baseline Reporting Milestone</u>	<u>NA</u>	<u>NA</u>
<u>P4P Measure - Reporting Milestone</u>	<u>PY3 25%</u>	<u>PY4 25%</u>
<u>P4P Measure - Achievement Milestone</u>	<u>DY9 Goal 75%</u>	<u>DY10 Goal 75%</u>
<u>New DY9-10 P4P Measure - Baseline Reporting Milestone</u>	<u>12.5%</u>	<u>NA</u>
<u>New DY9-10 P4P Measure - Reporting Milestone</u>	<u>PY3 12.5%</u>	<u>PY4 25%</u>
<u>New DY9-10 P4P Measure - Achievement Milestone</u>	<u>DY9 Goal 75%</u>	<u>DY10 Goal 75%</u>

Figure: 1 TAC §354.1753(g)(3)

	QISMC			IOS
	Baseline below MPL	Baseline equal to or greater than the MPL and lower than the HPL	Baseline equal to or greater than the HPL	
DY9	<u>MPL plus 12%</u> gap closure between the MPL and HPL	The greater absolute value of improvement between: 22.5% gap closure towards HPL, or baseline plus (minus) 9% of the difference between the HPL and MPL	The lesser absolute value of improvement of baseline plus (minus) 9% of the difference between the HPL and MPL or the IOS goal	11.75% gap closure
DY10	<u>MPL plus 15%</u> gap closure between the MPL and HPL	The greater absolute value of improvement between: 25% gap closure towards HPL, or baseline plus (minus) 10% of the difference between the HPL and MPL	The lesser absolute value of improvement of baseline plus (minus) 10% of the difference between the HPL and MPL or the IOS goal	12.5% gap closure*

*The innovative measure will be treated as an IOS measure in DY10 and will have a gap closure of 12.5% over baseline unless an alternate goal based on benchmark data is recommended by the measure developer as part of the measure validation process.

Figure: 1 TAC §354.1753(g)(4)

	QISMC			IOS
	Baseline below MPL	Baseline equal to or greater than the MPL and lower than the HPL	Baseline equal to or greater than the HPL	
DY9	<u>MPL plus 2.5% gap closure between the MPL and HPL</u>	The greater absolute value of improvement between: 10% gap closure towards HPL, or baseline plus (minus) 4% of the difference between the HPL and MPL	The lesser absolute value of improvement of baseline plus (minus) 4% of the difference between the HPL and MPL or the IOS goal	5% gap closure
DY10	<u>MPL plus 10% gap closure between the MPL and HPL</u>	The greater absolute value of improvement between: 20% gap closure towards HPL, or baseline plus (minus) 8% of the difference between the HPL and MPL	The lesser absolute value of improvement of baseline plus (minus) 8% of the difference between the HPL and MPL or the IOS goal	10% gap closure*

*The innovative measure will be treated as an IOS measure in DY10 and will have a gap closure of 10% over baseline unless an alternate goal based on benchmark data is recommended by the measure developer as part of the measure validation process.

Figure: 22 TAC §681.205

<u>Rule</u>		<u>Action</u>
§681.41(a)	- <u>A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:</u>	L5
-	<u>1 the effectiveness of services;</u>	L5
-	<u>2 the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or</u>	L5
-	<u>3 the practice or field of counseling.</u>	L5
§681.41(b)	- <u>A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.</u>	L5
§681.41(c)	- <u>A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.</u>	L5
§681.41(d)	- <u>A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.</u>	L5
§681.41(e)	- <u>Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:</u>	L4
-	<u>1 fees and arrangements for payment;</u>	L4
-	<u>2 counseling purposes, goals, and techniques;</u>	L4
-	<u>3 any restrictions placed on the license by the Council;</u>	L4
-	<u>4 the limits on confidentiality;</u>	L4
-	<u>5 any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and</u>	L4
-	<u>6 supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;</u>	L4
-	<u>7 the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and</u>	L4
-	<u>8 the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.</u>	L4

§681.41(f)	-	<u>A licensee must inform the client in writing of any changes to the items in subsection (e) of this section, prior to initiating the change.</u>	<u>L4</u>
§681.41(g)	-	<u>Technological means of communication may be used to facilitate the therapeutic counseling process.</u>	<u>L5</u>
§681.41(h)	-	<u>In accordance with the provisions of the Act, §503.401(a)(4), a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.</u>	<u>L3</u>
§681.41(i)	-	<u>A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, must not be considered as a violation of state law relating to illegal remuneration.</u>	<u>L3</u>
§681.41(j)	-	<u>A licensee must not engage in activities for the licensee's personal gain at the expense of a client.</u>	<u>L4</u>
§681.41(k)	-	<u>A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.</u>	<u>L4</u>
§681.41(l)	-	<u>A licensee must set and maintain professional boundaries.</u>	<u>L4</u>
§681.41(m)	-	<u>Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.</u>	<u>L4</u>
-	<u>2</u>	<u>A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.</u>	<u>L4</u>
-	<u>3</u>	<u>A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.</u>	<u>L1</u>
-	<u>5</u>	<u>The licensee must not provide counseling services to previous or current: (A) family members; (B) personal friends; (C) educational associates; or (D) business associates.</u>	<u>L5</u>
-	<u>6</u>	<u>The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.</u>	<u>L5</u>
-	<u>7</u>	<u>The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.</u>	<u>L4</u>

§681.41(n)	-	<u>The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.</u>	<u>L5</u>
§681.41(p)	-	<u>The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:</u>	<u>L5</u>
§681.41(q)	-	<u>For each client, a licensee must keep accurate records of:</u>	<u>L5</u>
-	<u>1</u>	<u>signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order</u>	<u>L4</u>
-	<u>2</u>	<u>intake assessment;</u>	<u>L5</u>
-	<u>3</u>	<u>dates of counseling treatment intervention;</u>	<u>L5</u>
-	<u>4</u>	<u>principal treatment methods;</u>	<u>L5</u>
-	<u>5</u>	<u>progress notes;</u>	<u>L5</u>
-	<u>6</u>	<u>treatment plan; and</u>	<u>L5</u>
-	<u>7</u>	<u>billing information.</u>	<u>L5</u>
§681.41(r)	-	<u>Records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client or five (5) years after the client reaches age of majority, whichever is greater.</u>	<u>L5</u>
§681.41(t)	-	<u>Billing Requirements.</u>	-
-	<u>1</u>	<u>A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.</u>	<u>L5</u>
-	<u>2</u>	<u>Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.</u>	<u>L5</u>
-	<u>3</u>	<u>Pursuant to Texas Health and Safety Code, Chapter 611 on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.</u>	<u>L5</u>
-	<u>4</u>	<u>A licensee may not knowingly overcharge a client.</u>	<u>L4</u>
-	<u>5</u>	<u>With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.</u>	<u>L4</u>
§681.41(u)	-	<u>A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.</u>	<u>L4</u>
§681.41(v)	-	<u>Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure</u>	<u>L5</u>

		<u>consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.</u>	
<u>§681.41(w)</u>	-	<u>A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.</u>	<u>L4</u>
<u>§681.41(x)</u>	-	<u>Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.</u>	<u>L5</u>
<u>§681.41(y)</u>	-	<u>A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.</u>	<u>L4</u>
<u>§681.41(z)</u>	-	<u>A licensee must not knowingly overtreat a client.</u>	<u>L4</u>
<u>§681.41(aa)</u>	-	<u>A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.</u>	<u>L1</u>
<u>§681.41(cc)</u>	-	<u>A licensee or an applicant for licensure must not participate in any way in the falsification of applications for licensure or renewal of license.</u>	<u>L1</u>
<u>§681.42(b)</u>	-	<u>A licensee must not engage in sexual contact with or sexual exploitation of a person who is:</u>	-
-	<u>1</u>	<u>a client</u>	<u>L1</u>
-	<u>2</u>	<u>an LPC Associate supervised by the licensee; or</u>	<u>L1</u>
-	<u>3</u>	<u>a student of a licensee at an educational institution at which the licensee provides professional or educational services.</u>	<u>L1</u>
<u>§681.42(c)</u>	-	<u>A licensee must not practice therapeutic deception of a client.</u>	<u>L1</u>
<u>§681.42(f)</u>	-	<u>A licensee must report sexual misconduct as follows:</u>	-
-	<u>1</u>	<u>If a licensee has reasonable cause to suspect a client, LPC Associate, or student has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client, LPC Associate, or student alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee must report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:</u>	<u>L5</u>
-	-	<u>(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred;</u>	<u>L5</u>
-	-	<u>(B) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health provider; and</u>	<u>L5</u>
-	-	<u>(C) to the appropriate agency listed in §681.45 of this title (relating to Confidentiality and Required Reporting).</u>	<u>L5</u>
-	<u>2</u>	<u>Before making a report under this subsection, the reporter must inform the alleged victim of the reporter's duty to report and must determine if the alleged victim wants to remain anonymous.</u>	<u>L5</u>
<u>§681.43(a)</u>	-	<u>Prior to or following the administration of any test, a licensee must make known to clients the purposes and explicit use to be made of the test as a part of a professional counseling relationship.</u>	<u>L5</u>

§681.43(b)	-	<u>A licensee must not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.</u>	L5
§681.43(c)	-	<u>A licensee must not administer any test without the appropriate training and experience to administer and interpret the test.</u>	L4
§681.43(d)	-	<u>A licensee must observe the necessary precautions to maintain the security of any test administered by the license or under the licensee's supervision.</u>	L5
§681.43(e)	-	<u>In accordance with the §503.003(b)(1) of the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.</u>	L5
§681.44	-	<u>A licensee must not:</u>	-
-	<u>1</u>	<u>use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling;</u>	L3
§681.45(b)	-	<u>A licensee must not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code Chapter 611 or other state or federal statutes or rules.</u>	L4
§681.45(c)	-	<u>A licensee must comply with Texas Health and Safety Code, Chapters 181 and 611, concerning access to mental health records and confidential information.</u>	L4
§681.45(d)	-	<u>A licensee must report information as required by the following statutes:</u>	-
-	<u>1</u>	<u>Texas Family Code Chapter 261, Subchapter B, concerning report of abuse or neglect of minors;</u>	L4
-	<u>2</u>	<u>Texas Human Resources Code Chapter 48, Subchapter B, concerning reports of abuse, neglect, or exploitation of elderly or disabled persons;</u>	L4
-	<u>3</u>	<u>Texas Health and Safety Code Chapter 161, Subchapter L, concerning abuse, neglect, and unprofessional or unethical conduct in health care facilities; and</u>	L4
-	<u>4</u>	<u>Texas Civil Practice and Remedies Code, §81.006, concerning duty to report sexual exploitation by a mental health provider.</u>	L4
-	<u>5</u>	<u>A licensee must comply with Texas Occupations Code §109.051 relating to the release of treatment information concerning the treatment of a sex offender.</u>	L4
§681.46(b)	-	<u>A licensee has the responsibility of reporting alleged violations of the Act or this chapter to the Council.</u>	L5
§681.47(b)	-	<u>An assumed or trade name used by a licensee must not be false, deceptive, or misleading as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements).</u>	L5
§681.49(a)	-	<u>Information used by a licensee in any advertisement or announcement must not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.</u>	L5
§681.49(d)	-	<u>The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if</u>	L5

		<u>the degree would be accepted as a transfer degree by an accredited school.</u>	
<u>§681.49(e)</u>	-	<u>Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.</u>	<u>L5</u>
<u>§681.49(g)</u>	-	<u>All advertisements or announcements of counseling including telephone directory listings by a person licensed by the Council must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas Behavioral Health Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."</u>	<u>L5</u>
<u>§681.49(h)</u>	-	<u>An LPC Associate must indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Associate." On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the associate's name must be followed by the name of the supervisor.</u>	<u>L5</u>
<u>§681.49(i)</u>	-	<u>A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.</u>	<u>L5</u>
<u>§681.50(a)</u>	-	<u>In research with a human participant, a licensee must take reasonable precautions to ensure that the participant does not suffer emotional or physical harm.</u>	<u>L5</u>
<u>§681.50(b)</u>	-	<u>A licensee must ensure the full protection of a client's identity when using data obtained from a professional counseling relationship for the purposes of education or research.</u>	<u>L5</u>
<u>§681.50(c)</u>	-	<u>When conducting or reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.</u>	<u>L5</u>
<u>§681.50(d)</u>	-	<u>A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to the person/persons who have contributed significantly to the licensee's research or publication.</u>	<u>L5</u>
<u>§681.91(d)</u>	-	<u>An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate may not own an independent professional counseling practice.</u>	<u>L1</u>
<u>§681.91(l)</u>	-	<u>An LPC Associate must not accept direct payment for services from a client.</u>	<u>L4</u>
<u>§681.93(c)(2)</u>	-	<u>The supervisor may not be an employee of his or her LPC Associate.</u>	<u>L5</u>
<u>§681.93(a)</u>	-	<u>A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.</u>	-
-	<u>1</u>	<u>The supervisory written record must contain:</u>	-
-	-	<u>(A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;</u>	<u>L5</u>
-	-	<u>(B) a copy of the LPC Associate's wall certificate noting the dates of issuance and expiration;</u>	<u>L5</u>

-	-	<u>(C) fees and record of payment;</u>	<u>L5</u>
-	-	<u>(D) the date of each supervisory session;</u>	<u>L5</u>
-	-	<u>(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; and</u>	<u>L5</u>
-	-	<u>(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section.</u>	<u>L5</u>
-	<u>2</u>	<u>The supervisor must provide a copy of all records to the LPC Associate upon request.</u>	<u>L5</u>
<u>§681.93(c)</u>	-	<u>The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.</u>	<u>L5</u>
-	<u>1</u>	<u>The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.</u>	<u>L5</u>
-	<u>2</u>	<u>The supervisor may not be an employee of his or her LPC Associate.</u>	<u>L5</u>
<u>§681.93(d)</u>	-	<u>The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.</u>	<u>L5</u>
<u>§681.93(e)</u>	-	<u>If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.</u>	<u>L5</u>
<u>§681.93(f)</u>	-	<u>The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:</u>	-
-	<u>1</u>	<u>after the LPC Associate license was issued; and</u>	<u>L5</u>
-	<u>2</u>	<u>in not less than 18 months of supervised counseling experience.</u>	<u>L5</u>
<u>§681.93(h)</u>	-	<u>Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:</u>	-
-	<u>2</u>	<u>must refund all supervisory fees for supervision after the date the supervisor status is revoked; and</u>	<u>L4</u>
<u>§681.51(b)</u>	-	<u>A licensee who serves as a parenting coordinator has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.</u>	-
-	<u>3</u>	<u>A licensee must not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.</u>	<u>L4</u>
<u>§681.52(d)</u>	-	<u>In accordance with Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.</u>	<u>L4</u>
<u>§681.52(e)</u>	-	<u>In accordance with Texas Family Code, §153.6101(b)(1), a licensed professional counselor associate must not serve as a parenting facilitator.</u>	<u>L5</u>

§681.52(i)	-	<u>A licensee, serving as a parenting facilitator, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.</u>	L5
§681.52(j)	-	<u>In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used so as to avoid offering the opportunity for further coercion.</u>	L5
§681.52(k)	-	<u>A licensee serving as a parent facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.</u>	L5
§681.52(l)	-	<u>A licensee serving as a parenting facilitator must not provide legal advice.</u>	L5
§681.52(m)	-	<u>A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.</u>	L5
§681.52(n)	-	<u>A licensee serving as a parenting facilitator must not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.</u>	L5
§681.52(o)	-	<u>A licensee serving as a parenting facilitator must maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.</u>	L5
§681.52(p)	-	<u>A licensee serving as a parenting facilitator:</u>	-
-	<u>1</u>	<u>must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;</u>	L5
-	<u>2</u>	<u>must not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;</u>	L5
-	<u>3</u>	<u>must not coerce or improperly influence any party to make a decision;</u>	L5
-	<u>4</u>	<u>must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and</u>	L5
-	<u>5</u>	<u>must not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.</u>	L5
§681.52(q)	-	<u>A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must be given or received by a licensee for parenting facilitation or other professional referrals.</u>	L5
§681.52(s)	-	<u>A licensee serving as a parenting facilitator must communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.</u>	L5
§681.52(u)	-	<u>A licensee serving as a parenting facilitator must, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:</u>	L5
-	<u>1</u>	<u>the limitations on confidentiality in the parenting facilitation process; and</u>	L5

-	<u>2</u>	<u>the basis of fees and costs and the method of payment including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.</u>	<u>L5</u>
<u>§681.52(v)</u>	-	<u>Information obtained during the parenting facilitation process must not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.</u>	<u>L5</u>
<u>§681.52(w)</u>	-	<u>In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.</u>	<u>L5</u>
<u>§681.52(x)</u>	-	<u>(x) A licensee serving as a parenting facilitator:</u>	<u>L5</u>
-	<u>1</u>	<u>must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;</u>	<u>L5</u>
-	<u>2</u>	<u>must report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;</u>	<u>L5</u>
-	<u>3</u>	<u>must maintain records necessary to support charges for services and expenses and must make a detailed accounting of those charges to the parties and their counsel if requested to do so;</u>	<u>L5</u>
-	<u>4</u>	<u>must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and</u>	<u>L5</u>
-	<u>5</u>	<u>must maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.</u>	<u>L5</u>
<u>§681.52(y)</u>	-	<u>Records of a licensee serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records must be maintained for the period of time described in §681.41(r) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.</u>	<u>L5</u>
<u>§681.52(z)</u>	-	<u>Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the Council.</u>	<u>L5</u>
<u>§681.52(aa)</u>	-	<u>Charges for parenting facilitation services must be based upon the actual time expended by the parenting facilitator or as directed by the written agreement of the parties and/or formal order of the court.</u>	<u>L5</u>
<u>§681.52(bb)</u>	-	<u>All fees and costs must be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.</u>	<u>L5</u>
<u>§681.52(dd)</u>	-	<u>Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.</u>	<u>L5</u>

<u>§681.52(ff)</u>	-	<u>A licensee serving as a parent facilitator must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.</u>	<u>L5</u>
<u>§681.53(a)</u>	-	<u>Licensees must comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.</u>	<u>L5</u>
<u>§681.53(c)</u>	-	<u>Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation.</u>	<u>L5</u>
<u>§681.53(d)</u>	-	<u>Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the Council.</u>	<u>L5</u>
<u>§681.53(e)</u>	-	<u>A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable Council rules regardless of whether the licensee is acting as a factual witness or an expert.</u>	<u>L5</u>
<u>§681.53(f)</u>	-	<u>A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.</u>	<u>L4</u>
<u>§681.53(g)</u>	-	<u>Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Subchapter D, Chapter 107.</u>	<u>L3</u>
<u>§681.53(h)</u>	-	<u>Licensees providing child custody evaluations or adoption evaluations must, prior to beginning the evaluation, in writing inform the parties of:</u>	<u>L5</u>
-	<u>1</u>	<u>The limitations on confidentiality in the evaluation process; and</u>	<u>L4</u>
-	<u>2</u>	<u>The basis of fees and costs and the method of payment, including any fees associated with postponement, cancelation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.</u>	<u>L4</u>
<u>§681.53(i)</u>	-	<u>A Licensed Professional Counselor Associate (LPC Associate) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.</u>	<u>L4</u>

Figure: 22 TAC §781.805

DISCIPLINARY ACTIONS (reported to the National Practitioner Databank and posted on website)

Level 5: Reprimand (Administrative Penalty: not less than \$250; no more than \$1,000 per day)

- _____ Failure to inform consumer of all required items, provide a written explanation of treatment and charges [§§781.201(a)(6); 781.203(7); 781.204(a); 781.209(5); 781.213(b); and 781.215(a)]
- _____ Failure to discourage others from making exaggerated or false claims [§781.204(i)]
- _____ Failure to protect individual from harm resulting from individual or group setting [§781.204(o)]
- _____ Failure to inform client about testing as part of treatment [§781.207(a)]
- _____ Appropriate, reproduce, or modify published tests or parts thereof without publisher's permission [§781.207(b)]
- _____ Failure to report name or address change to the board within 30 days of change [§§781.212(c); 781.416(a)(1)]
- _____ Failure to inform client of board name, address, and telephone number for purposes of filing a complaint [§781.214(a)]
- _____ Failure to set and maintain proper supervisor-supervisee relationship [§781.404(b)(11)(E) and (L)]
- _____ Failure to ensure supervisee knows of, and complies with, all board rules [§781.404(b)(11)(K)]
- _____ Failure to develop and implement written supervision remediation plan [§781.404(b)(12)(G)]
- _____ Failure to keep accurate records, keep records for appropriate retention period [§§781.204(f); 781.209(1) and (4)]
- _____ Failure to assess proper fee(s), maintain accurate billing records [§§781.204(g); 781.210(d)]
- _____ Failure to establish a plan for custody of records when professional services cease [§781.209(3)]
- _____ Failure to maintain written release of information in permanent record, review and update [§781.211(e)]
- _____ Failure to maintain and timely submit accurate supervised experience records [§781.404(b)(11)(A)]
- _____ Make misleading, exaggerated, or false claims [§§781.201(a)(2); 781.204(h); 781.206(a) and (b); 781.216(a), (c), and (d)]
- _____ Failure to base all services on an assessment, evaluation or diagnosis of the client; evaluate client's condition without personally interviewing client or disclosing that a personal interview has not been completed [§§781.201(a)(5); 781.203(3)]
- _____ Failure to maintain client confidentiality except when disclosure is prescribed by statute or board rules [§§781.201(a)(7); 781.209(6); 781.211(b) and (g)]
- _____ Failure to set and maintain professional boundaries and avoid dual relationships [§§781.201(a)(8); 781.204(e), (l), and (q)]
- _____ Failure to evaluate a client's progress on a continuing basis to guide service delivery and make use of supervision and consultation as indicated by client's needs [§§781.201(a)(12)]
- _____ Failure to inform other provider when providing concurrent therapy [§781.203(1)]
- _____ Failure to obtain informed consent (or court order) with all related items [§781.203(9)]
- _____ Engage in activities to personal needs or for personal gain; promotion of personal

or business activities that are unrelated to the current professional relationship [§781.204(d) and (p)]

- _____ Accept from or give gift to a client with a value in excess of \$25.00 [§781.204(m)]
- _____ Failure to comply with Texas Health and Safety Code concerning access to mental health records; release information only with a written permission signed by client or client guardian [§§781.211(c) and (d)]
- _____ Failure to report alleged violation to the board (except sexual misconduct) [§781.212(b)]
- _____ Failure to cooperate with board investigation and provide timely response to request for information [§§781.212(f); 781.602(a)(2)]
- _____ Display a license certificate or card which has been reproduced, expired, suspended, or revoked [§781.215(c)]
- _____ Failure to assume responsibility for human subject's emotional, physical, and social welfare when conducting research [§§781.217(a)]
- _____ Failure to provide written information to parties in child custody or adoption evaluations [§781.222(h)(1) and (2)]
- _____ Charge or collect a fee or anything of value from employee or contract employee for supervision [§781.404(b)(11)(C)]
- _____ Provide supervision to a family member [§781.404(b)(11)(F)]
- _____ Failure to develop and update supervision plan [§781.404(b)(11)(P)]
- _____ Failure to submit written report to the board within 30 days of arrest, filing of criminal case, deferred adjudication, criminal conviction, settlement or judgment in civil suit, or complaint, investigation, or action by governmental agency or other licensing or certifying body [§781.416(a)(2)-(5)]
- _____ Failure to terminate non-beneficial counseling relationship; transfer client to appropriate care [§§781.201(a)(13); 781.203(2)]

Level 4: Probated Suspension (Admin Penalty: not less than \$250; no more than \$2,000 per day)

- _____ Refuse to serve a client based solely on basis of discrimination [§781.201(a)(1)]
- _____ Failure to practice within scope of competency and accepted professional standards as appropriate to client's needs [§§781.201(a)(3), 781.202(d), (e), and (g)-(i); 781.203(4); 781.221(ff); 781.222(i)]
- _____ Exploit a position of trust with client or former client [§781.201(a)(11)]
- _____ Failure to assume responsibility for clients during bartering of services [§781.203(8)]
- _____ Enter into a business relationship with a client [§781.204(c)]
- _____ Failure to provide services in the context of a professional relationship [§781.204(j)]
- _____ Borrow or lend money or items of value to clients or relatives of clients [§§781.204(n)]
- _____ Failure to report alleged sexual misconduct to the board [§781.205(g)(1)-(4)]
- _____ Failure to administer or interpret test only with training and experience [§781.207(c)]
- _____ Failure to retain and dispose of client records in ways that maintain confidentiality [§781.209(2)]
- _____ Knowingly or flagrantly overcharge; bill for improper, unreasonable or unnecessary services [§781.210(c) and (e)]
- _____ Failure to report information concerning abuse or neglect of minors, elderly, or disabled; report exploitation by a mental health services provider [§781.211(f)(1-4)]

- _____ Failure to ensure subject’s identity and confidentiality when obtaining data from a professional relationship for purposes of research [§781.217(b)]
- _____ Provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case [§§781.220(e); 781.221(d); 781.222(f)]
- _____ Failure to supervise only supervisees within scope of competency [§781.404(b)(1)]
- _____ Failure to clearly indicating services, licensure category, and that supervisee is under supervision on billing documentation [§781.404(b)(11)(H)]
- _____ Failure to address issues outlined in board ordered supervision [§781.404(b)(13)(B)]

Level 3: Suspension (less than a year, Admin Penalty: not less than \$250; no more than \$3,000 per day)

- _____ Practice while impaired by alcohol or drugs or use any illegal drug; promote, encourage, or concur in the illegal use or possession of alcohol or drugs [§§781.201(a)(10) and 781.208]
- _____ Offer to pay or agree to accept any remuneration for securing or soliciting clients or patronage [§§781.204(b); 781.210(a) and (b)]
- _____ Provide expert opinion or recommendation without conducting appropriate child custody evaluation [§781.222(g)]
- _____ Failure to maintain qualifications of supervisory status while providing supervision [§781.404(b)(10)]
- _____ Provide supervision without having met all requirements for current, valid board-approved supervisor status [§781.404(b)(11)(J)]
- _____ Failure to inform all supervisees of termination of supervisor status and help them to find alternate supervision [§781.404(b)(11)(M)]

Level 2: Suspension (one year or more, Admin Penalty: not less than \$250; no more than \$4,000 per day)

- _____ Alter license certificate [§781.215(b)]

Level 1: Revocation (Admin Penalty: not less than \$250; no more than \$5,000 per day)

- _____ Engage in sexual misconduct; therapeutic deception [§§781.201(a)(9); 781.205(b) and (c)]
- _____ Aid or abet unlicensed practice [§781.203(5)]
- _____ Participate in falsifying documents submitted to the board [§781.203(6)]
- _____ Continue to supervise or fail to refund all supervisory fees paid after termination or expiration of supervisor status [§781.404(b)(11)(N) and (O)]
- _____ Failure to comply with board order [§781.602(a)(3), and (9)]

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

RFP - General Contractors for Elgin Station

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Construction of the CARTS's Elgin Station in Elgin, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, July 21st, 2020. Go to : <http://ridecarts.weebly.com/procurement.html> , select the **Elgin Station** link, and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 11:00 a.m., July 28, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, July 21 2:00 p.m. - RFP Documents available for download

Tuesday, July 28 11:00 a.m. - Virtual pre-proposal conference

Tuesday, August 11 2:00 p.m. - Deadline for proposal questions

Friday, August 14 5:00 p.m. - Responses to questions posted on website

Thursday, August 20 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality, and content of the submittal.

TRD-202002778

David Marsh

General Manager

Capital Area Rural Transportation System

Filed: July 7, 2020

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/13/20 - 07/19/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/13/20 - 07/19/20 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 07/01/20 - 07/31/20 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 07/01/20 - 07/31/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202002775

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 7, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 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 commissions 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 commissions 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 **August 17, 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0345-PWS-E; IDENTIFIER: RN102686078; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; PENALTY: \$150; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BASF Corporation; DOCKET NUMBER: 2020-0434-AIR-E; IDENTIFIER: RN100225689; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufac-

turing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1331, 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 submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(F) and (H) and §122.143(4), FOP Number O1331, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 8199A, Special Conditions Number 1, FOP Number O1331, GTC and STC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and THSC, §370.008 and TWC, §5.702, by failing to pay the outstanding fees for toxic chemical release reports for TCEQ Financial Administration Division Account Number 0500596; PENALTY: \$3,560; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Baylor College of Medicine; DOCKET NUMBER: 2020-0436-AIR-E; IDENTIFIER: RN100216324; LOCATION: Houston, Harris County; TYPE OF FACILITY: medical college and research facility; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1417, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BODIN CONCRETE, L.P.; DOCKET NUMBER: 2020-0399-WQ-E; IDENTIFIER: RN102070687; LOCATION: Rowlett, Dallas County; TYPE OF FACILITY: concrete production site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG110685, Part III, Permit Requirements A.1., by failing to comply with permitted effluent limitations; PENALTY: \$12,687; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Braskem America, Incorporated; DOCKET NUMBER: 2020-0271-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical 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; 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: \$5,560; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Chase Industries, Incorporated; DOCKET NUMBER: 2019-0558-AIR-E; IDENTIFIER: RN100244433; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: composite door manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 19777A, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O2418, General Terms and Conditions (GTC) and

Special Terms and Conditions (STC) Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 5.C, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to perform quarterly opacity observations; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 10.C, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to conduct weekly audio, visual, and olfactory (AVO) inspections; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 11.C, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to calibrate each monitoring device at least annually in accordance with the manufacturer's specifications; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 11.E, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to record pressure drop readings at least once per day that each system is required to be operated; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 11.H, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to perform monthly AVO inspections of the capture systems to check for leaking components; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19777A, SC Number 11.I, FOP Number O2418, GTC and STC Number 5, and THSC, §382.085(b), by failing to keep an inspection and maintenance log for each baghouse; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2418, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O2418, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$120,543; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Earnest Wayne Weatherford dba Houston Suburban Heights Mobile Home Park; DOCKET NUMBER: 2020-0339-PWS-E; IDENTIFIER: RN101223634; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (c)(3), by failing to provide disinfection facilities for the groundwater supply for the purposes of microbiological control and distribution protection; 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds a Class D or higher license; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(q)(1), by failing to issue a boil water notice to the customers of the facility within 24 hours of a low pressure event using the prescribed format in 30 TAC §290.47(c); PENALTY: \$7,601; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2020-0402-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1302 and PSDTX1085, Special Conditions Number 1, Federal Operating Permit Number O1897, General Terms and Conditions and Special Terms and Conditions Number 27, and Texas Health and

Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,850; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,940; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: JENSEN HOMEBUILDERS INC; DOCKET NUMBER: 2020-0442-WQ-E; IDENTIFIER: RN105530497; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: JSWC, Ltd.; DOCKET NUMBER: 2020-0189-EAQ-E; IDENTIFIER: RN102807989; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial development; RULES VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Pollution Plan (EAPP) ID Number 1882.01, Special Conditions Number III, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §213.4(j) and EAPP ID Number 1882.01, Special Conditions Number IV and Standard Conditions Number 18, by failing to submit certification by a Texas Licensed Professional Engineer that the permanent Best Management Practices or measures were constructed as designed, including certification that each individual component that was to be added to the basin was constructed and installed correctly, the components in need of modifications have been corrected, that the underdrain piping and the sand filter media meet required specifications, and that the entire basin functions in design, to the San Antonio Regional Office within 30 days of site completion; PENALTY: \$7,771; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Kaneka North America LLC; DOCKET NUMBER: 2020-0435-AIR-E; IDENTIFIER: RN100218841; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: polyimide film plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 141510, Special Conditions Numbers 1 and 14.C, Federal Operating Permit Number O3528, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$2,438; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$975; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: MCP 100 Congress Member, LLC; DOCKET NUMBER: 2019-1356-WQ-E; IDENTIFIER: RN107235871; LOCATION: Austin, Travis County; TYPE OF FACILITY: underground parking garage; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1) by failing to maintain authorization for the discharge of water contaminated by petroleum substances into or adjacent to any water in the state; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(13) COMPANY: NJK ENTERPRISE, INCORPORATED dba N K Texaco; DOCKET NUMBER: 2020-0439-PST-E; IDENTIFIER: RN101858801; LOCATION: Katy, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.241(b)(3) and Texas Health and Safety

Code, §382.085(b), by failing to perform and complete all decommissioning activities, as applicable for the particular Stage II vapor recovery system equipment installed at the station; 30 TAC §334.50(b)(1)(A) and (2)(A)(ii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) system for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to identify and designate for the UST system at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: \$5,315; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Petra Firma Development Group Inc; DOCKET NUMBER: 2020-0443-WQ-E; IDENTIFIER: RN105530497; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: South Hampton Resources, Incorporated; DOCKET NUMBER: 2020-0172-AIR-E; IDENTIFIER: RN101995611; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: distillation and chemical toll processing plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.113b(a)(5), New Source Review (NSR) Permit Number 3295, Special Conditions (SC) Number 2.A, Federal Operating Permit (FOP) Number O2776, 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 provide written notification at least 30 days prior to the filling or refilling of each storage vessel for which an inspection is required; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 3295, SC Number 1, FOP Number O2776, GTC and STC Number 15, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2776, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and (15) and §122.165(a)(8), FOP Number O2776, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness with the permit compliance certification; PENALTY: \$27,192; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,877; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: South Hampton Resources, Incorporated; DOCKET NUMBER: 2020-0433-AIR-E; IDENTIFIER: RN101995611; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.113b(b)(1)(ii), New Source Review Permit (NSR) Number 3295, Special Conditions (SC) Number 2.A, Federal Operating Permit (FOP) Number O2776, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform measurements of the gaps between the tank wall and secondary seal within 60 days of the initial fill with volatile organic liquids or at least once per year thereafter; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 3295, SC Number 1, FOP Number O2776, GTC and STC Number 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$55,352; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT:

\$22,141; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Strip Property Land and Water, LLC; DOCKET NUMBER: 2020-0344-PWS-E; IDENTIFIER: RN102315165; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(h)(4)(C), by failing to properly complete a test report by the recognized backflow prevention assembly tester for each assembly tested and on a form approved by the executive director; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$2,981; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: Sulphur Springs Autolube LLC dba Autolube; DOCKET NUMBER: 2020-0261-PST-E; IDENTIFIER: RN100534809; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: oil change facility; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C for the facility; PENALTY: \$4,725; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Tidehaven Independent School District; DOCKET NUMBER: 2020-0445-PWS-E; IDENTIFIER: RN109227942; LOCATION: El Maton, Matagorda County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$975; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: TPC Group LLC; DOCKET NUMBER: 2019-1365-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 19806, Special Conditions Number 2, Federal Operating Permit Number O1598, General Terms and Conditions and Special Terms and Conditions Number 25, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$127,500; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002769

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 7, 2020



Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015825001

APPLICATION AND PRELIMINARY DECISION. Quadvest, L.P., 26926 Farm-to-Market Road 2978, Magnolia, Texas 77354, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015825001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. TCEQ received this application on October 1, 2019.

The facility will be located at 0.9 mile north of the intersection of Cypress Rosehill Road and Farm-to-Market Road 2920, in Harris County, Texas 77377. The treated effluent will be discharged directly to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use. In accordance with §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Spring Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. 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=-95.698055%2C30.098611&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Malcolm Purvis Library, 510 Melton Street, Magnolia, in Montgomery County, Texas and at the Northwest Branch Library, 11355 Regency Green Drive, Cypress, in Harris County, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All

formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, August 10, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 355-801-043. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 655-0060 and enter access code 475-957-645. Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests 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 from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

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 Quadvest, L.P. at the address stated above or by calling Mr. Mark Urback, P.E., at (281) 356-5347.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: July 06, 2020

TRD-202002806

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2020



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40311

Application. Sharps Environmental Services, Inc., 1544 Northeast Loop, Carthage, Texas 75633 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40311, to construct and operate a medical waste processing facility. The

proposed facility, Sharps Environmental Services, Inc., will be located at 7760 North Interstate Highway 35, New Braunfels, Texas 78130, in Comal County. The Applicant is requesting authorization to store and transfer medical waste as defined in 30 TAC §326.3(23); that includes surgical centers, doctors' offices and other medical facilities, nursing and rehab facilities, veterinary facilities, medical spas, dialysis centers, medical testing laboratories, and dental offices. The registration application is available for viewing and copying at the New Braunfels Public Library, 700 East Common Street, New Braunfels, Texas 78130 and may be viewed online at <https://www.sharpsinc.com/public-access-new-braunfels>. 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://www.arcgis.com/apps/webappviewer/index.html?find=6410%20Long%20Dr%2C%20Houston%2C%20TX%2C%2077087%2C%20USA&marker=-98.03248649999999%2C29.778452999999995%2C%2C%2C%2C&markertemplate=%7B%22title%22%3A%22%22%2C%22longitude%22%3A-98.03248649999999%2C%22latitude%22%3A29.778452999999995%2C%22isIncludeShareUrl%22%3Atrue%7D&level=18>. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

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 Sharps Environmental Services, Inc. at the address stated above or by calling Mr. David Martin at (903) 693-2525.

TRD-202002805
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 8, 2020



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40312

Application. Terrabella Environmental Services, Inc., P.O. Box 39, Leming, Texas 78050-0039 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40312, to construct and operate a medical waste transfer facility. The proposed facility, Terrabella Environmental Services Edinburg, will be located at 5518 E. Curve Road, Edinburg, Texas 78542-5897, in Hidalgo County. The Applicant is requesting authorization to receive and transfer medical waste and non-hazardous outdated/off specification pharmaceuticals from hospitals, clinics, nursing homes and other health care-related facilities. The registration application is available for viewing and copying at the Sekula Memorial Library, 1906 S. Closer, Blvd., Edinburg, Hidalgo County, Texas 78541 and may be viewed online at: <https://www.qnadiversified.com/copy-of-tes-medical-waste-transfer->. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/8HqvO0>

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 Terrabella Environmental Services Inc. at the address stated above or by calling Mr. Michael D. Carr, President at (210) 892-4496.

TRD-202002807

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2020



Notice of Application and Opportunity to Request a
Public Meeting for a New Municipal Solid Waste Facility:
Registration Application No. 40313

Application. Terrabella Environmental Services, Inc. and P.O. Box 39
Leming, Texas 78050, has applied to the Texas Commission on Envi-

ronmental Quality (TCEQ) for proposed Registration No. 40313, to construct and operate a Type V municipal solid waste medical processing facility. The proposed facility, Terrabella Environmental Services Pleasanton, will be located 433 Zander Ln. 78064 in Atascosa, County. The Applicant is requesting authorization to process, store, and transfer municipal solid waste that includes medical waste, outdated/off specification pharmaceuticals and seized drugs. The facility may accept Animal and Plant Health Inspection Services (APHIS) and International Maritime Pollution Protocol (MarPol) wastes. The facility may also receive municipal solid waste (MSW) that would be classified as medical waste if it were generated by health care-related facilities as identified in 326.61(h). After the receipt of MSW as previously described, the waste will be subjected to the same requirements as regulated medical waste. The registration application is available for viewing and copying at the Pleasanton Public Library and 115 N Main St., Pleasanton, Atascosa County, Texas 78064, and may be viewed online at <http://www.qnadiversified.com/permits>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/uX9mu>. 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 Terrabella Environmental Services, Inc., at the address stated above or by calling Michael Carr at (210) 892-4496.

TRD-202002808

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2020



Notice of Declaration of Technical Completeness: Radioactive Material License Number R05807

APPLICATION. Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for the renewal of Radioactive Material License R05807, received May 31, 2018, without any amendment to the license.

Radioactive Material License R05807 authorizes the disposal of Fernald containerized by-product material that was formerly stored in Silos 1 and 2 of the Fernald Waste Management Plant. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Disposal Facility and the Federal Waste Disposal Facility for commercial and federal low-level radioactive waste disposal. The by-product material disposal facility is located at 9998 State Highway 176 West in Andrews County, Texas.

The Executive Director has determined that the renewal of the license is appropriate because the renewal application does not pose a detrimental impact and is in consideration of maintaining public health and safety, worker safety, and environmental health. Pursuant to Texas Health & Safety Code at §401.113 and 30 TAC §305.62(k), the Executive Director has determined that the proposed licensed activity does not have a significant effect on the human environment and does not require a standalone environmental analysis. The license will be amended to change the license expiration date to a date that will be ten years from the date the renewed license is issued, replace references to the initial license application and to any tie-down documents with reference to the renewal application and letters associated with review of the renewal application, and update the financial security values. By initiative of the Executive Director, the license will be amended to modify license conditions for clarity, to update language, to remove obsolete license conditions and language, to require the Radiation Safety Officer to have refresher training, to add as a license condition that the Licensee notify the Executive Director of any confirmed exceedance of the screening level for the radioactive environmental monitoring system, and to add

record and maintenance requirements associated with the daily inspection of the disposal unit.

The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-103.063055%2C32.4425&level=12>. For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the renewal application and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the by-product material disposal facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license renewal application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the Andrews Public Library, 109 NW 1st Street, Andrews, Texas, 79714.

INFORMATION AVAILABLE ONLINE: For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the license 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 www.tceq.texas.gov/about/comments.html, 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.

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 comments or to ask questions about the amendment. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications/amendments or if requested by a local legislator. A public meeting is not a contested case hearing. Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk within 30 days after the date of newspaper publication of this notice. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant material or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted. A request for a contested case hearing must be submitted to the Office of the Chief Clerk within 30 days after the date of newspaper publication of this notice.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the

request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the license and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license 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.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www.tceq.texas.gov/about/comments.html> within 30 days from the date of this notice or 30 days from the date of publication in the *Texas Register*, whichever is later.

AGENCY CONTACTS AND INFORMATION: If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay Cartwright at (432) 525-8698.

TRD-202002804
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 8, 2020



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the execu-

tive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 17, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: SADAF GLOBAL CORPORATION; DOCKET NUMBER: 2018-1493-PST-E; TCEQ ID NUMBER: RN101810687; LOCATION: 8187 United States Highway 59, Wharton, Wharton County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.71(d)(1) and (3), by failing to provide an amended registration form for any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; TWC, §26.3475(d) and 30 TAC §334.49 and §334.54(b)(3), by failing to adequately protect a temporarily out-of-service UST system from corrosion; and TWC, §26.3475(a) and 30 TAC §334.50 and §334.54(c)(1), by failing to monitor a temporarily out-of-service UST system for releases; PENALTY: \$5,250; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002774
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 7, 2020



Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until

such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 2020**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 17, 2020**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Thind Holdings LLC dba On The Road 104; DOCKET NUMBER: 2019-0049-PST-E; TCEQ ID NUMBER: RN101823573; LOCATION: 9353 United States Highway 59 North, Leggett, Polk County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in such a manner that corrosion protection is continuously provided to all underground metal components of the UST system; and 30 TAC §334.45(c)(3)(A), by failing to securely anchor emergency shutoff valves (also known as shear or impact valves) at the base of the dispensers; PENALTY: \$9,187; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202002771

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 7, 2020



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 17, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CATEX Acquisitions, LLC; DOCKET NUMBER: 2019-0401-PWS-E; TCEQ ID NUMBER: RN101217347; LOCATION: 1105 Westwood Lane near Giddings, Lee County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(a), 30 TAC §290.46(e)(3)(A), and TCEQ Agreed Order (AO) Docket Number 2016-1378-PWS-E, Ordering Provision Number 2.a.i., by failing to use a water works operator who holds a Class D or higher license; 30 TAC §290.46(m)(1)(A) and TCEQ AO Docket Number 2016-1378-PWS-E, Ordering Provision Number 2.a.iv., by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B) and TCEQ AO Docket Number 2016-1378-PWS-E, Ordering Provision Number 2.a.v., by failing to inspect the facility's pressure tank annually; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories the facility will use to comply with the monitoring requirements; 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ AO Docket Number 2017-0673-PWS-E, Ordering Provision Number 2.d., by failing to submit a Disinfection Level Quarterly Operating Report to the executive director (ED) by the tenth day of the month following the end of each quarter; TCEQ AO Docket Number 2017-0673-PWS-E, Ordering Provision Number 2.a.iv., by failing to provide public notifications and submit a copy of each public notification to the ED; TCEQ AO Docket Number 2017-0673-PWS-E, Ordering Provisions Numbers 2.a.v. and b.ii., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) prepared using the compliance

monitoring data for the most current year to each bill paying customer, and failing to submit to the TCEQ a copy of the CCR and certification that the CCR has been distributed to persons served by the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested and failing to mail a copy of the consumer notification of the tap results to the ED along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements; PENALTY: \$17,899; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Larry Hollis; DOCKET NUMBER: 2019-0494-PST-E; TCEQ ID NUMBER: RN101744894; LOCATION: 109 East College Street, Rising Star, Eastland County; TYPE OF FACILITY: underground storage tank system; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, respondent had not conducted the triennial testing of the corrosion protection system; and 30 TAC §334.602(a), by failing to designate, train, and certify, at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$5,372; STAFF ATTORNEY: Christopher Mullins, Litigation Division, MC 175, (512) 239-0141; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: THE ORIGINAL GRANT, INC. dba SUNSHINE MARKET; DOCKET NUMBER: 2019-0993-PST-E; TCEQ ID NUMBER: RN102026499; LOCATION: 12634 Grant Road, Suite A, Cypress, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system. Specifically, respondent failed to conduct its annual line leak detector and pressurized piping tightness tests; PENALTY: \$3,874; STAFF ATTORNEY: Christopher Mullins, Litigation Division, MC 175, (512) 239-0141; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002773

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 7, 2020



NOTICE OF PUBLIC MEETING: Proposed Air Quality Permit No. 159582

APPLICATION. Tycon Ready Mix, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for the issuance of Permit No. 159582. This application would authorize construction of a permanent Concrete Batch Plant located at the following driving directions: from the intersection of Hunters Trail and County Road 139 (Burkett Road), go north on County Road 139 for approximately 180 feet, site entrance will be on the right, Flint, Smith County, Texas 75762. This application is being processed

in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-95.349166%2C32.209166&level=12>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and prepared a draft permit which if approved, would establish the conditions under which the facility must operate.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.

The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, July 21, 2020, at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 285-866-667. Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (914) 614-3221 and enter access code 696-710-555.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and the draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Tyler regional office, and the Bullard Community Library, 211 West Main Street, Bullard, Smith County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Tyler Regional Office, 2916 Teague Drive, Tyler, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Tycon Ready Mix, LLC, 19710 Beech Creek Court, Cypress, Texas 77433-3158 or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (972) 768-9093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: July 01, 2020

TRD-202002803

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2020



Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit: Proposed Permit No. 2400

Application. The City of Waco, 401 Franklin Avenue, Waco, McLennan County, Texas 76701, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the construction and operation of a new Type I Municipal Solid Waste (MSW) landfill. The facility is proposed to be located at 4730 T K Parkway, Axtell, 76624 in McLennan and Limestone Counties, Texas. The TCEQ received Parts I and II of this application on August 8, 2018 and Parts III and IV of the complete application on May 29, 2020; as such, this is a continuation of that application and not a new application. The permit application is available for viewing and copying at the Waco-McLennan County Central Library, 1717 Austin Avenue, Waco, McLennan County, Texas 76701 and may be viewed online at <https://www.waco-texas.com/landfill-application-process.asp>. 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=-96.931111%2C31.701388&level=12>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name,

phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Waco at the address stated above or by calling Mr. Charles Dowdell, Director of Solid Waste at (254) 750-1601.

TRD-202002802

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2020

◆ ◆ ◆

General Land Office

Correction of Error

The Texas General Land Office adopted amendments to 31 TAC §9.35, in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4526). The text for subsection (a) was published incorrectly. Subsection (a) should read as follows:

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

(1) The GLO will treat a well as non-producing if no RRC production reports are filed for that well or if reports showing zero production are filed with the RRC for that well.

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

(3) Lessee shall obtain written permission from GLO before surface commingling state lease or state pooled-unit production with private lease production or before surface commingling oil and/or gas from two separate state leases and/or pooled state units. Lessee shall ob-

tain written permission from GLO staff before down-hole commingling production from two or more intervals where the state's royalty interests differ between the proposed commingled intervals. Send commingling requests to the Texas General Land Office, Attention: Mineral Leasing, 1700 North Congress Avenue, Austin, TX 78701-1495. The requirement to obtain GLO staff approval applies to all commingle exception applications including new permits and amendments to existing permits.

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

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

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

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

TRD-202002800

◆ ◆ ◆

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 June 15, 2020 to July 3, 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, July 10, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, August 9, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Dow Hydrocarbons and Resources LLC

Location: The project site is located in the San Bernard River, at 2887 County Road 471, in Brazoria, Brazoria County, Texas.

Latitude & Longitude (NAD 83): 28.96621, -95.56311

Project Description: The applicant is requesting to decommission two 12.75" diameter section pipelines (North and South crossings) measuring approximately 506 feet for each segment, these pipelines were permitted and constructed in 1942. The applicant is requesting to decommission 506 feet of the north and south segment pipelines under San Bernard River. The purpose is to replace the existing crossing section (a separate Regional General Permit) based on an In-Line Inspection (ILI) that was performed on the pipeline. Based on the data from the ILI, two areas located in the existing river crossing section, that

meet the criteria based on 49 Code of Federal Regulations (CFR) 195 for liquid pipelines, need to be replaced. Based on the installation of new 12.75" section, the two existing 12.75" sections are to be abandoned/decommissioned in place as they will not meet the requirements for service. The applicant states that there will be no discharge of fill material or excavation to waters of the United States for the proposed project. Water will be placed inside the two 12.75" pipelines, and both pipelines will be capped on each side of the river crossing. The pipeline sections are being decommissioned in place to avoid disturbance to the river or its banks. This will avoid the possibility of having to dig the river banks back which could cause future erosion. It will also avoid any digging in the river or collapsing of the river bottom in the cavity where the abandoned pipeline sections would be pulled out.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00698. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1299-F1

Applicant: Grand Beach Development, LLC

Location: The project site is located in palustrine emergent wetlands, within a 33.76-acre site, located south of East Beach Drive, in Galveston, Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.312611. -94.759872

Project Description: The applicant proposes to amend Department of the Army (DA) Permit SWG-2011-01140 to change the authorized purpose and need of the permit from construction of a single-family residential development to a mixed-use commercial and residential development. The applicant proposes to relocate the previously authorized roadway entrance and discharge 12 cubic yards of fill material into 0.007 acre of adjacent wetlands during the placement of a 40-foot-long by 3-foot-wide by 5-foot-tall reinforced concrete box culvert.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2011-01140. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

CMP Project No: 20-1300-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202002809

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: July 8, 2020

State Independent Living Council

Request for Proposals

Texas State Independent Living Council (SILC) is a nonprofit organization that assists Texans with a disability to live as independently as they chose. Texas SILC is federally authorized by the Rehabilitation Act of 1973 and Workforce Innovation Act of 2014 and develops the State Plan for Independent Living (SPIL) that serves as a strategic plan to employ Independent Living Services.

Texas SILC has partnered with the Administration for Community Living (ACL) to provide quality of life grants over the next three years to community-based disability organizations serving people living with paralysis. For the purposes of this grant, the definition of paralysis refers to a range of disabling conditions due to stroke, spinal cord injury, multiple sclerosis, cerebral palsy or any central nervous system disorders that results in difficulty or the inability to move the upper or lower extremities. The goal of this pilot is to increase supports and services for Texans living with paralysis in rural and underserved areas of the State that will improve the opportunity to become more independent and integrated in the community of their choice.

Texas SILC is not a direct service provider and relies on community partners to provide direct services and supports for Texans with disabilities and fulfill the goals and objectives of the SPIL. Texas SILC has procured a telehealth-type platform (e.g. Zoom platform) and is searching for community-based organizations to provide virtual Independent Living Services to Texans living with paralysis in unserved or underserved areas of the State. More information about the project may be viewed on the Texas SILC's *Virtual Independent Living Services* project webpage at <https://www.txsilc.org/projects/vils.html>.

The *Virtual Independent Living Services* project will provide Texas community-based organizations with vested interest in serving people living with paralysis the virtual platform to provide independent living services and supports. The virtual platform will provide Texans living with paralysis access to a secure, HIPPA compliant platform, to receive services and supports.

Individuals will be able to access this platform through a smart-phone application, tablet, computer, or by telephone. The goal of the virtual services platform is to bring services to hundreds of individuals living with paralysis that would have not otherwise been able to access Independent Living Services due to lack of transportation, accessible housing, and personal care attendant support. This platform should also provide social interaction and support for people with paralysis who might be living with depression or other mental health issues. The virtual platform should offer greater access to independent living services to individuals and strengthen their network of peers and mentors.

Specific examples of services that may be provided through virtual platform to Texans living with paralysis in unserved or underserved areas includes but are not limited to: peer support; employment and career development training; personal care attendant management; money management and personal finance; healthy eating and adaptive fitness exercises; civic engagement in and out of institutions, state-facilities, and nursing homes; assistive technology and the use of applications to assist in daily living activities and at work; travel support and training; leadership and development; self and systems advocacy methods; accessible housing and transportation options and rights; resources for parents with disabilities; support groups and discussion topics for caregivers and family members; service animal options and rights; and a host of other topics impacting Texans living with paralysis.

Awarded organizations selected through this request for proposal (RFP) will be required to use and gain competence in the telehealth-type platform to be provided. The specifics of training and proficiency expectations will be discussed and agreed to prior to award.

As part of the grant partnership, Texas SILC is committed to providing technical assistance and training on the telehealth platform. Texas SILC will provide each awarded organization a toolkit that explains in detail what both awarded organizations and participating Texans will need to know to effectively use and leverage the technology. The toolkit will include outreach materials, instructional videos, and troubleshooting support.

The Texas SILC is accepting proposals from community-based organizations that serve people living with paralysis to employ a virtual Independent Living Services to Texans with paralysis. Proposals can be submitted until 5:00 p.m. Central Standard Time, Friday, July 31, 2020, via email to VILS@txsilc.org.

Up to nine community-based disability organizations will received up to \$40,000 each to provide virtual Independent Living Services to Texans living with paralysis. All funds must be used in accordance to applicable federal laws and regulations.

An independent review panel will review all applications and make a recommendation for awards to the Texas SILC. Texas SILC will announce awards by 5:00 p.m. Central Standard Time, Friday, August 14, 2020.

Project services must start Tuesday, September 1, 2020, and must be concluded June 30, 2021. Awardees must report performance and financial data that measure the impact and effectiveness of the award by July 31, 2021.

Texas SILC requests community partners willing to participate in the *Virtual Independent Living Services* project to complete a proposal that ensures the following project objectives and outcomes are achieved.

Project outcomes include:

- Texans with paralysis who live in unserved or underserved areas or represent an underserved population will have greater access to Independent Living Services in the environment they choose;
- Texans with paralysis will experience decreased isolation and will better connect with peers;
- The project will increase coalitions between community-based organizations that provide supports and services to Texans with paralysis;
- Texans with disabilities will have enhanced employment opportunities and have more strategies to thrive in the community of their choice.

Applicants interested in participating as a direct service provider in the project must submit a proposal that is no more than five single-spaced pages in Verdana 12-point font in Microsoft Word and respond to the following items:

1. Organization Background: please provide the name of your organization, organization address, Tax ID Number, name of contact person and contact information.
2. Narrative Description of the Project: please provide a narrative description of the type of virtual independent living services your organization plans to provide; milestones; how it will achieve project goals, objectives, and outcomes; and the data your organization will collect and report on that measures the impact and effectiveness of the award (e.g. Number of Texans living with paralysis who received an Independent Living Service). In this section, please include the purpose and scope of the project; location of work; describe the need for the project and solutions; deliverables that will be scheduled; and a timeline. Additional preference will be made for those community-based organizations that describe how the services are targeted to those populations listed in Section 3.2 of the SPIL. The SPIL may be viewed at the Texas SILC's website: www.txsilc.org.
3. Capacity: please provide an overview of your organization, leadership and staff expertise, organizational ability to provide financial management and performance reporting. Please also provide a budget and budget justification for the project; type of payment schedule preferred (e.g. monthly; quarterly); and if and how the awarded funds will be used for travel.

Respondents are encouraged to provide as much detail in their proposals as possible regarding their community-based services in order to allow the independent review panel and the Texas SILC to accurately assess the best possible candidates. This is particularly valuable given the range of possible services responsive to this RFP.

Awarded organizations who receive an award up to \$40,000 grant under this RFP will not be considered for subsequent awards under this grant.

This grant was supported in part by grant number 90PRRC0002 from The United States Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their feeling and conclusions. Points of view or opinions do not, however, represent official Administration for Community Living policy.

Questions about this request for proposal must be submitted in writing via email to VILS@txsilc.org by 5:00 p.m. Central Standard Time, Monday, July 27, 2020. All answers will be subsequently published on Texas SILC's *Virtual Independent Living Services* project webpage: <https://www.txsilc.org/projects/vils.html>.

Texas SILC looks forward to developing new partnerships to increase supports and services for Texans living with paralysis living in underserved or unserved areas of the State.

TRD-202002799

Colton Read

Council Chair

State Independent Living Council

Filed: July 7, 2020

◆ ◆ ◆

Public Utility Commission of Texas

Notice of Proceeding for 2020 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2020 compliance proceeding initiated by the Public Utility Commission of Texas (commission) for eligible telecommunications providers (ETP) and resale eligible telecommunications providers (RETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The commission initiated this proceeding under Public Utility Regulatory Act (PURA) §56.030 and 16 Texas Administrative Code (TAC) §26.417 and §26.419. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from the universal service fund program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP and RETP receiving support from the TUSF. In accordance with PURA §56.030 and 16 TAC §26.417 and §26.419, each ETP and RETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds. All carriers in Texas requesting certification by the commission shall submit an affidavit by September 1, 2020.

Carriers designated as ETPs and RETPs may contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 32567.

TRD-202002726
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2020



Notice of Proceeding for 2020 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2020 certification proceeding initiated by the Public Utility Commission of Texas (commission) for state certification of common carriers as eligible telecommunications carriers to receive federal universal service funds.

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 Code of Federal Regulations §54.314, the commission annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission and the Universal Service Administrative Company by October 1 each year in order for ETCs to receive federal high-cost support. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under 16 Texas Administrative Code §26.418(k), each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission must submit an affidavit by September 1, 2020.

Carriers seeking to be certified may contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-202002725
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2020



Texas Department of Transportation

Public Notice - Advertising in Texas Department of Transportation's Travel Literature and Texas Highways Magazine

Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* magazine, both in print and in digital or online assets. The Texas Department of Transportation is authorized by Texas Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §§23.15 - 23.18 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, both in print and in digital or online, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.17, the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's contact list. Requests may be submitted by email at TexasHighways@AJRMediaGroup.com or made by telephone to (800) 383-7677 or by fax to (713) 942-0277.

The department is now accepting advertising for the 2021 edition of the *Texas State Travel Guide*, scheduled to be printed and available in March 2021. The *Texas State Travel Guide* is designed to encourage readers to explore and travel to and within the State of Texas. The guide lists cities and towns, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide may also include sections listing Texas lakes, state parks, state and national forests, along with hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

Media kits are available on the texashighways.com website. All *Texas State Travel Guide* insertion orders, including premium space will be accepted on a first-come first-served basis. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order. In most cases, larger ads will be positioned ahead of smaller ads.

The department is now accepting advertising for the 2021 edition of the *Texas Official Travel Map* scheduled to be printed and available in January 2021. The State of Texas distributes this map to travelers in Texas and to those who request information while planning to travel in Texas.

The department continues to accept advertising for all quarterly issues of the *Texas Highways Events Calendar*, beginning with the Winter 2020 - 2021 calendar. The *Texas Highways Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Highways Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Winter 2020 - 2021 calendar lists events scheduled for December 2020, January 2021, and February 2021. The Spring 2021 calendar lists events scheduled for March 2021, April 2021, and May 2021. The Summer 2021 calendar lists events scheduled for June 2021, July 2021, and August 2021. The Fall 2020 calendar lists events scheduled for September 2021, October 2021, and November 2021.

The advertising due dates for the *Texas Highways Events Calendar* vary depending on the issue involved. The publication deadline for accept-

ing advertising space in the *Texas Highways Events Calendar* is the third Wednesday of the fourth month preceding the issue date. The deadline for accepting materials for the *Texas Highways Events Calendar* is one week after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The department is now accepting advertising for all monthly 2020 - 2021 issues of *Texas Highways* magazine. *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas-based, and that are determined by the department to be

of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Highways Events Calendar*, *Texas Highways* magazine, the *Texas Official Travel Map* and related digital assets are included in this notice. Digital assets may include *TexasHighways.com* and *Texas Highways* eNewsletters.

TEXAS STATE TRAVEL GUIDE

Space Closing: December 7, 2020
Materials Due: December 14, 2020
First Distribution: March 2021

2021 Edition Advertising Rates

Approximate distribution for 2021: 300,000

Run of Publication	Gross
Full Page	\$9,372
Two Thirds (2/3) Page	\$6,695
Half (1/2) Page	\$5,630
One Third (1/3) Page	\$3,376
One Sixth (1/6) Page	\$2,129

Premium Positions	Gross
Cover 2 (Inside Front)	\$10,778
Cover 3 (Inside Back)	\$10,590
Cover 4 (Back)	\$11,247
Spread (Run of Publication)	\$17,807
Inside Front Cover Spread	\$19,143
Inside Back Cover Spread	\$18,964

Notes

- All rates are 4-color (no black and white).
- Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, contact an advertising representative:

AJR Media Group
Phone: 800-383-7677
Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date. All orders must be paid in full by December 14, 2020, unless tear sheet or proof of printing is required.

TEXAS HIGHWAYS EVENTS CALENDAR

<u>Issue Date</u>	<u>Space Closing</u>	<u>Materials Due</u>	<u>Release Date</u>
Winter (Dec, Jan, Feb)	Aug 15	Aug 22	Nov 1
Spring (Mar, Apr, May)	Nov 15	Nov 22	Feb 1
Summer (Jun, Jul, Aug)	Feb 15	Feb 22	May 1
Fall (Sep, Oct, Nov)	May 15	May 22	Aug 1

*If 15th falls on a Saturday, Sunday, or holiday, space close or release date moves back to preceding Friday

2020-2021 Advertising Rates (Gross)

Approximate quarterly distribution: 65,000

Run of Publication	1x	2x	4x
Full Page	\$2,223	\$2,154	\$2,084
Half (1/2) Page	\$1,528	\$1,493	\$1,424
One Third (1/3) Page	\$1,111	\$1,076	\$1,007

Premium Positions	1x	2x	4x
Cover 2 (Inside Front)	\$2,423	\$2,434	\$2,355
Cover 3 (Inside Back)	\$2,977	\$2,348	\$2,272
Cover 4 (Back)	\$2,556	\$2,477	\$2,397

Notes

- All rates are 4-color (no black and white).
- Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, contact an advertising representative:

AJR Media Group
 Phone: 800-383-7677
 Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TEXAS HIGHWAYS MAGAZINE

Space Deadline: 27th of the third month preceding issue date

Materials Deadline: Seven days after space closing

When material or space closing dates fall on a Sat, Sun, or a holiday, space or materials are due the preceding workday.

2020-2021 Texas Rate Card (Gross)

300,000+ Total Readership

Run of Publication	1x	3x	6x	12x	18x	24x
Full Page	\$7,476	\$7,102	\$6,878	\$6,654	\$6,429	\$6,206
2/3 Page	\$6,174	\$5,865	\$5,681	\$5,495	\$5,310	\$5,124
1/2 Page	\$4,853	\$4,615	\$4,469	\$4,323	\$4,177	\$4,032
1/3 Page	\$3,492	\$3,318	\$3,213	\$3,108	\$3,003	\$2,899
1/6 Page	\$1,922	\$1,826	\$1,768	\$1,710	\$1,653	\$1,595
Spread	\$14,204	\$13,494	\$13,068	\$12,642	\$12,215	\$11,789

Run of Publication	1x	3x	6x	12x	18x	24x
Cover 2	\$8,447	\$8,025	\$7,771	\$7,518	\$7,264	\$7,011
Cover 3	\$8,148	\$7,741	\$7,496	\$7,252	\$7,007	\$6,763
Cover 4	\$8,597	\$8,167	\$7,909	\$7,651	\$7,393	\$7,136
IFC Spread	\$15,127	\$14,371	\$13,917	\$13,460	\$13,009	\$12,555
IBC Spread	\$14,843	\$14,101	\$13,656	\$13,201	\$12,765	\$12,320

Notes

- Current circulation details available from advertising representative.
- All rates are 4-color (no black and white).
- Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.
- Co-op advertisements do not qualify for special placement; those with excessive photography, fonts, and copy will not be accepted.
- Back cover and inside front cover ad design must be approved by the Texas Highways Publisher.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, including advertorials, contact an advertising representative:

AJR Media Group
 Phone: 800-383-7677
 Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TEXAS HIGHWAYS MAGAZINE

Space Deadline: 27th of the third month preceding issue date

Materials Deadline: Seven days after space closing

When material or space closing dates fall on a Sat, Sun, or a holiday, space or materials are due the preceding workday.

2020-2021 National Rate Card (Gross)

300,000+ Total Readership

Run of Publication	1x	3x	6x	12x	18x	24x
Full Page	\$7,476	\$7,102	\$6,878	\$6,654	\$6,429	\$6,206
2/3 Page	\$6,174	\$5,865	\$5,681	\$5,495	\$5,310	\$5,124
1/2 Page	\$4,853	\$4,615	\$4,469	\$4,323	\$4,177	\$4,032
1/3 Page	\$3,492	\$3,318	\$3,213	\$3,108	\$3,003	\$2,899
1/6 Page	\$1,922	\$1,826	\$1,768	\$1,710	\$1,653	\$1,595
Spread	\$14,204	\$13,494	\$13,068	\$12,642	\$12,215	\$11,789

Run of Publication	1x	3x	6x	12x	18x	24x
Cover 2	\$8,447	\$8,025	\$7,771	\$7,518	\$7,264	\$7,011
Cover 3	\$8,148	\$7,741	\$7,496	\$7,252	\$7,007	\$6,763
Cover 4	\$8,597	\$8,167	\$7,909	\$7,651	\$7,393	\$7,136
IFC Spread	\$15,127	\$14,371	\$13,917	\$13,460	\$13,009	\$12,555
IBC Spread	\$14,843	\$14,101	\$13,656	\$13,201	\$12,765	\$12,320

Notes

- Current circulation details available from advertising representative.
- All rates are 4-color (no black and white).
- Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.
- Co-op advertisements do not qualify for special placement; those with excessive photography, fonts, and copy will not be accepted.
- Back cover and inside front cover ad design must be approved by the Texas Highways Publisher.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, including advertorials, contact an advertising representative:

AJR Media Group
 Phone: 800-383-7677
 Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TEXAS OFFICIAL TRAVEL MAP

Space Closing: October 4, 2020

Materials Due: October 11, 2020

First Distribution: January 2021

2021 Edition Advertising Rates

Approximate annual distribution: 700,000

Run of Publication	Gross
Full Panel	\$9,500
Half (1/2) Panel	\$4,750

Notes

- All rates are 4-color (no black and white).
- Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, contact an advertising representative:

AJR Media Group

Phone: 800-383-7677

Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TEXAS HIGHWAYS WEBSITE (TEXASHIGHWAYS.COM)

Space & Materials Deadline: Minimum two weeks prior to the first of the month in which the ad is intended to run

2020-2021 Advertising Rates

Approximate annual website visits / pageviews: 1 million+ / 2.4 million+

Run of Site	Gross
Medium Rectangle (300 x 250)	\$495
Half Page (300 x 600)	\$695

Notes

- Current web statistics are available from advertising representatives.
- Based on available inventory.
- Banners are sold in 25,000 impression increments which are scheduled to be delivered in a 30-day period. If the impressions are not delivered in 30 days, banners will run until 25,000 impressions are delivered. Limit of 6 banners in each position (18 banners total) may be purchased for each product/service in a 12-month period.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, contact an advertising representative:

AJR Media Group
Phone: 800-383-7677
Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TEXAS HIGHWAYS E-NEWSLETTERS

Space close: 12th day of the month prior to the month of delivery

Material close: Seven days after space closing

Release dates:

Issue 1 "Events" - On or before the 15th of the month

Issue 2 "Extra" - After the 16th of the month and before the last day of the month

When material or space closing dates fall on a Sat, Sun, or a holiday, space or materials are due the preceding workday.

2020-2021 Advertising Rates

Approximate opt-in recipients per issue: 117,000

Placement	Gross
Exclusive Banner (468 x 60)	\$1,250
Exclusive Sponsored Content (image & copy)	\$1,875

Notes

- Current e-newsletter statistics are available from advertising representatives.
- Based on available inventory.
- Banners are sold in 25,000 impression increments which are scheduled to be delivered in a 30-day period. If the impressions are not delivered in 30 days, banners will run until 25,000 impressions are delivered. Limit of 6 banners in each position (18 banners total) may be purchased for each product/service in a 12-month period.

Umbrella Plans

- **Plan A:** 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
- **Plan B:** 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
- **Plan C:** 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways E-newsletters, and the Official Texas State Travel Map.

Advertising Contact

For additional details and to discuss other advertising opportunities, contact an advertising representative:

AJR Media Group

Phone: 800-383-7677

Email: TexasHighways@AJRMediaGroup.com

Payment

Payment with order or net 30 from invoice date.

TRD-202002753

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: July 6, 2020

◆ ◆ ◆ Workforce Solutions Deep East Texas

Request for Quotes 20-400

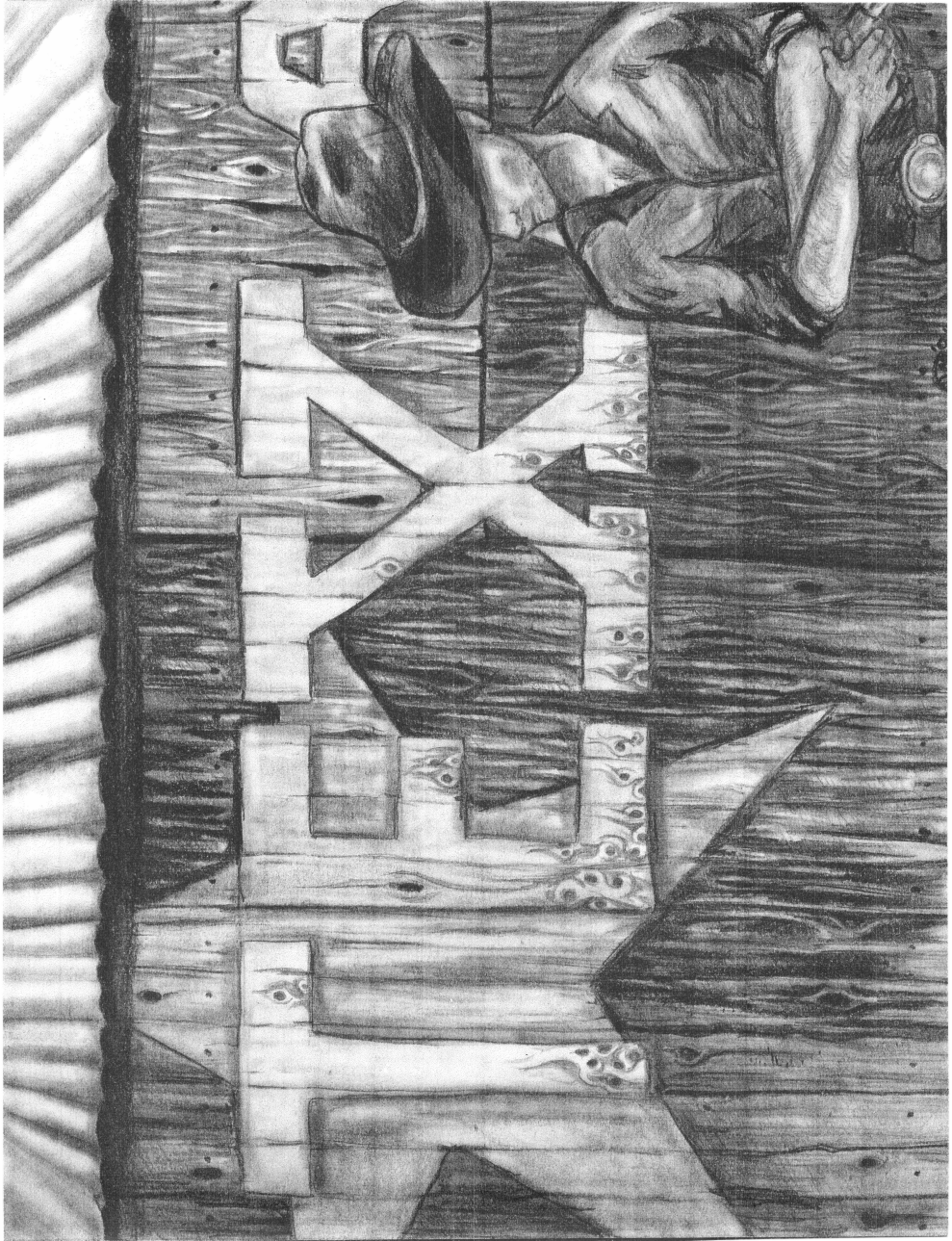
The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (Board) is seeking quotes from

qualified organizations to provide website redesign, hosting, ongoing maintenance and support services. Deadline for submitting a Proposal is August 21, 2020 at 4:00 p.m. The Request for Quote (RFQ 20-400) is available at www.detwork.org or by submitting a request to: Kim Moulder., DETLWDB, 415 S. First St., Suite 110 B, Lufkin, Texas 75901, phone (936) 639-8898, fax (936) 633-7491, or email kmoulder@detwork.org.

Workforce Solutions Deep East Texas is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. For hearing impaired (800) 735-2988 English (voice) / (800) 662-4954 Spanish (voice) (800) 735-2989 or 711 (TDD)

TRD-202002700
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: July 2, 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)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printedsc



LexisNexis[®]
It's how you know[™]