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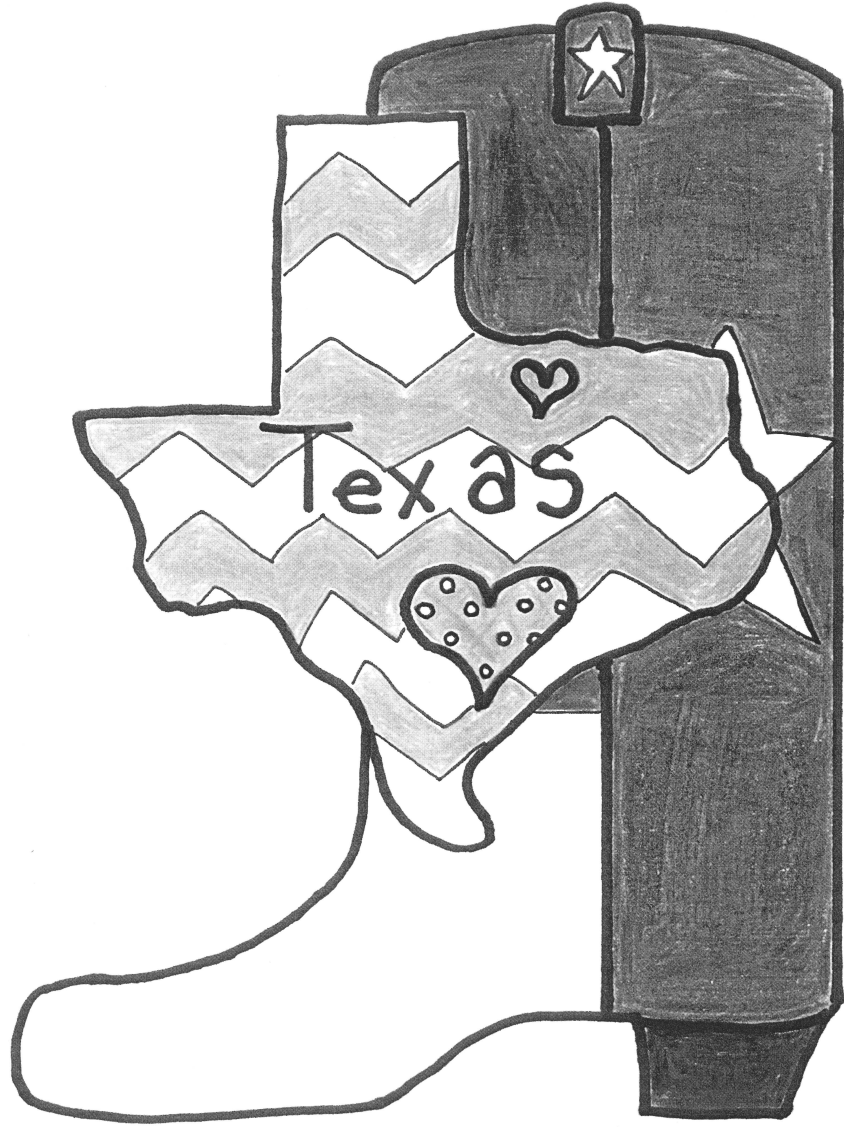
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THE GOVERNOR

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.

Proclamation 41-3960

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on February 4, 2023, certifying under Section 418.014 of the Texas Government Code that starting January 29, 2023, severe winter weather posed a threat of imminent disaster for Denton, Hays, Henderson, Milam, Smith, Travis, and Williamson counties; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, communications with county officials have confirmed that the certified conditions now also pose an ongoing and imminent threat of disaster in Anderson, Bastrop, Blanco, Burleson, Burnet, Caldwell, Delta, Falls, Hopkins, Hunt, Kendall, Lamar, Lee, Leon, Red River, Robertson, and Shelby counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster for Anderson, Bastrop, Blanco, Burleson, Burnet, Caldwell, Delta, Denton, Falls, Hays, Henderson, Hopkins, Hunt, Kendall, Lamar, Lee, Leon, Milam, Red River, Robertson, Shelby, Smith, Travis, and Williamson counties. All orders, directions, suspensions, and authorizations provided in the proclamation of February 4, 2023, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of February, 2023.

Greg Abbott, Governor
TRD-202300836



Proclamation 41-3961

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

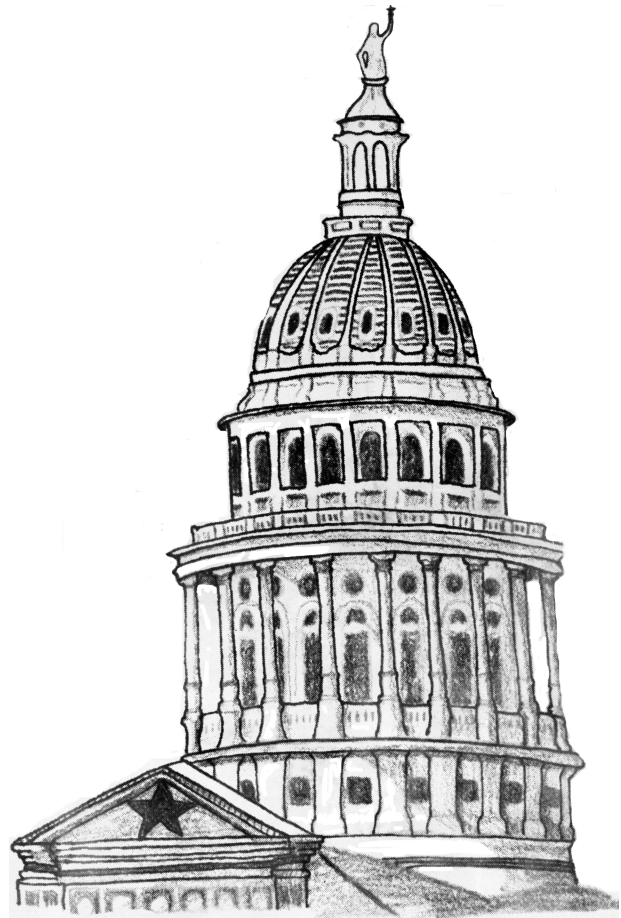
NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of February, 2023.

Greg Abbott, Governor
TRD-202300837





TEXAS ETHICS COMMISSION

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

Ethics Advisory Opinion

EAO-585: Whether Section 253.007 of the Election Code prohibits a former member of the Legislature from engaging in activity that would require registration under Chapter 305 if the former member contributed money from his political funds to a general-purpose political committee more than two years before being required to register.

Whether certain political contributions or expenditures made under Section 253.006(3) of the Election Code constitute a violation of Section 253.004 of the Election Code. (AOR 674.)

SUMMARY

The requestor may make political contributions and direct campaign expenditures from a general-purpose committee he controls without violating Sections 253.004, 253.006 and 253.007, provided he waits two years from the last contribution accepted by the political committee accepted from his candidate or officeholder account.

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

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

Issued in Austin, Texas, on February 16, 2023.

TRD-202300785

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: February 16, 2023



EAO-586: Whether the revolving door law prohibition in section 572.069 of the Government Code would prohibit a former employee of a state agency from accepting certain employment. (AOR 678.)

SUMMARY

A former state employee participates on behalf of a state agency in a procurement or contract negotiation by drafting contract terms and having direct communications with a company regarding a potential contract.

A former state employee participates on behalf of a state agency in a procurement or contract negotiation with a subcontractor if the subcontractor is identified as providing work in the contract.

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

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

Issued in Austin, Texas, on February 16, 2023.

TRD-202300786

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: February 16, 2023



EAO-587: A member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contributions; and (3) registers to lobby. May the former legislator lobby members of the Legislature during the two-year period after making the political contribution?

May the former legislator cure a violation of Section 253.007 or reduce the two-year waiting period imposed by Section 253.007 by reimbursing his or her campaign with personal funds in an amount that equals the political contributions made?

Pursuant to Section 571.173, Government Code, the commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law administered and enforced by the commission. What does "the amount at issue" mean for purposes of imposing a penalty for a violation of Section 253.007, Election Code? Does it mean: (1) the amount of political contributions at issue, (2) the maximum amount of income indicated on the person's lobby registration statement, or (3) something else? (AOR 679-CI.)

SUMMARY

Section 253.007, Election Code prohibits a person from engaging in activities that require the person to register under Chapter 305, Government Code during the two-year period after the date the person knowingly makes or authorizes a political contribution to another candidate, officeholder, or political committee from political contributions accepted by the person as a candidate or officeholder.

The plain language of Section 253.007 does not permit a person to cure a past violation or reduce the two-year waiting period by reimbursing the person's campaign with personal funds.

The "amount at issue" for purposes of Section 253.007 is reserved by the Commission.

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

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

Issued in Austin, Texas, on February 16, 2023.

TRD-202300788

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: February 16, 2023



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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.2, 2.70, 2.77

The Texas State Library and Archives Commission (commission) proposes amendments to 13 Texas Administrative Code §2.2, Responsibilities of the Commission and the Director and Librarian and §2.70, Vehicle Fleet Management, and new §2.77, Contract Approval Authority and Responsibilities.

BACKGROUND. The proposed amendments and new rule apply only to internal agency operations. Section 2.2, Responsibilities of Commission and Director and Librarian, outlines the general powers and responsibilities of both the commission and the director and librarian. One of the responsibilities retained by the commission is the authority to approve all contracts of \$100,000 or more. This dollar amount at which a contract requires commission approval was established in 1997 and has not been amended since adoption.

Over the years, contract amounts have steadily increased, as have the number of contracts entered into by the agency. In addition, guidance promulgated by the Texas Comptroller of Public Accounts advises that agencies should consider the total value of the initial contract term plus all optional renewals and extensions when considering contract value. As a result, the commission by necessity has had to consider and approve an increasing number of contracts, many of which are routine and relate to day-to-day agency operations. All contracts are thoroughly reviewed and approved by agency staff before execution regardless of whether the commission must formally approve the contract. Staff involved in reviewing contracts include program personnel, procurement and contracting personnel, the chief operations and fiscal officer, and the agency's legal counsel, a position the agency did not have prior to September 2019. The requirement to obtain commission approval on contracts has resulted in delays to the agency's ability to do business and in some cases to respond to critical needs in a timely manner.

The commission proposes to amend §2.2(b)(3) by removing the \$100,000 threshold for contract approvals and referring instead to new §2.77, also proposed in this rulemaking. Proposed new §2.77 is dedicated specifically to agency contract approvals and

is intended to ensure clarity and consistency in the agency's contract approval process.

Proposed §2.77 would require the commission to approve contracts or amendments with a value, defined to mean the overall estimated dollar amount of the initial contract term plus all optional renewals and extensions, expected to exceed \$1 million; amendments that result in the contract value exceeding \$1 million; certain contracts related to key agency programs regardless of contract value; and any other contract deemed appropriate for commission approval as determined by the director and librarian in consultation with the commission chair. The proposed rule would delegate approval of all other contracts to the director and librarian and delegate authority to execute all contracts for the agency. Under the proposed rule, the agency would present a contract plan to the commission for information purposes each year with periodic updates by the director and librarian.

Section 2171.1045 of the Government Code requires state agencies to adopt rules relating to the assignment and use of agency vehicles. Under this authority, the commission originally adopted §2.70 in 2001 and amended it in 2004 to update the name of the state agency responsible for the state's Office of Vehicle Fleet Management (OVFM). The state agency responsible for the OVFM has again changed since 2004. Therefore, the proposed amendments to §2.70 are necessary to update the state agency name. In addition, the commission is proposing other amendments to remove unnecessary language and make changes for improved readability and clarity.

FISCAL IMPACT. Donna Osborne, Chief Fiscal and Operations Officer, has determined that for each of the first five years the proposed amendments and new rule are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Osborne has determined that for each of the first five years the proposed amendments and new rule are in effect, the anticipated public benefit will be consistency and clarity in the agency's contract approval process and clarity and accuracy in the commission's rules. There are no anticipated economic costs to persons required to comply with the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments and new rule do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new rule will be in effect, the commission has determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposed rules will not require an increase or decrease in fees paid to the commission;
5. The proposed rules will create a new regulation but it is applicable only to internal agency operations;
6. The proposed rules will not expand, limit, or repeal an existing regulation;
7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and
8. The proposed rules will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new rule do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be submitted to Donna Osborne, Chief Operations and Fiscal Officer, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §441.002, which authorizes the commission to assign duties to the director and librarian and which requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the director and librarian and staff of the commission; Government Code, §2261.254, which requires the commission to approve and sign contracts over \$1 million, but authorizes the commission to delegate this authority to director and librarian or assistant state librarian; and Government Code, §2171.1045, which requires the commission to adopt rules relating to assignment and use of agency vehicles.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441, 2171, and 2261.

§2.2. *Responsibilities of Commission and the Director and Librarian.*

(a) **General Powers and Responsibilities.** The commission is a seven member citizen board appointed by the governor with the advice and consent of the senate. The commission is an agency within the executive branch, but functions independently within its statutory authority to serve the long-term public interest.

(b) **Powers and Responsibilities of the Commission.** The commission is responsible for establishing the policy framework through which the Texas State Library carries out its statutory responsibilities. The commission governs the library through the director and librarian. The staff of the library receive direction from the commission through the director and librarian. Specifically, the commission:

- (1) adopts administrative rules that guide the staff in administering library programs;
- (2) approves strategic and operating plans and requests for appropriations;
- (3) approves all contracts as specified in §2.77 of this subchapter (relating to Contract Approval Authority and Responsibilities) [of \$100,000 or more];
- (4) approves all competitive grants, and all other grants of \$100,000 or more, made by the library;
- (5) acknowledges acceptance of gifts, grants, or donations of \$500 or more that are in accord with the mission and purposes of the library;
- (6) oversees operations of the library for integrity, effectiveness, and efficiency;
- (7) acts as a final board of appeals for staff decisions or advisory board recommendations on grants, accreditation of librarians, certification of librarians, or other issues of concern to the public;
- (8) selects the director and librarian and approves the selection of the assistant state librarian; and
- (9) conducts a periodic performance review of the director and librarian.

(c) **Powers and Responsibilities of the Director and Librarian.** The director and librarian is responsible for the effective and efficient administration of the policies established by the commission. Specifically, the director and librarian:

- (1) selects, organizes, and directs the staff of the library;
- (2) establishes the operating budget for the library and allocates funds among strategies, programs, and projects within the limits of statutory authority and as set forth in the General Appropriations Acts of the legislature;
- (3) approves expenditures of funds in accordance with law;
- (4) represents the commission and reports on behalf of the commission to the governor, legislature, the public, or other organized groups as required;
- (5) reports in a timely manner all relevant information first to the chairman and subsequently to all members of the commission, endeavoring to report to members of the commission in such a manner that the members are equally well informed on matters that concern the commission;
- (6) delegates his/her responsibilities to the assistant state librarian or other agency staff as appropriate.

§2.70. *Vehicle Fleet Management.*

(a) To the extent applicable, the [The] commission adopts [and will implement] the Texas State Vehicle Fleet Management Plan developed [issued] by the Office of Vehicle Fleet Management [(OVFM)], Statewide Procurement Division of the Texas Comptroller of Public Accounts [Building and Procurement Commission].

(b) The director and librarian will designate a vehicle fleet manager for the commission.

(c) The vehicle fleet manager, with executive approval, is responsible for:

(1) managing the commission's vehicle fleet in accordance with the State Vehicle Fleet Management Plan;

(2) observing and enforcing statewide fleet management policies and procedures at the agency level; and

(3) developing written policies and procedures for managing commission vehicles that implement, to the extent feasible, the Best Practices guidelines of the State Vehicle Fleet Management Plan.

(d) Each commission vehicle is assigned to the commission motor pool and is available for checkout for official business by employees who are authorized to drive agency vehicles, with the advance approval of the executive or the vehicle fleet manager.

(e) The commission may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the commission makes a written documented finding that the assignment is critical to the needs and mission of the commission.

§2.77. Contract Approval Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for executing contracts required by the agency.

(b) Applicability. This rule applies to all contracts entered into by the agency.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--means Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.

(2) Commission--means the seven-member governing body of the Texas State Library and Archives Commission.

(3) Contract--means a written agreement between the agency and a contractor for goods or services. As used in this section, "contract" includes the following: interagency contracts with other government entities; interlocal agreements with other government entities; and other documents in which funds or services allocated to the agency are exchanged for the delivery of other goods or services.

(4) Value--means the estimated dollar amount the agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract. The agency shall base its determination of the proposed length of and compensation during the original term and renewal periods of the contract on best business practices, state fiscal standards, and applicable law, procedures, and regulations. The agency's determination of contract value reflects the definition set forth in the State of Texas Contract Management Guide as developed by the comptroller under Government Code, §2262.051.

(d) Approval Authority.

(1) Commission Approval. The director and librarian or designee shall present certain contracts to the commission for approval. The commission shall consider for approval:

(A) any amendment to a contract that results in the contract value exceeding \$1 million;

(B) any contract or amendment to a contract that relates to the TexShare Library Consortium regardless of overall contract value; and

(C) any other contract deemed appropriate for commission approval as determined by the director and librarian in consultation with the chair of the commission.

(2) Agency Approval.

(A) The commission delegates authority to the director and librarian or designee to approve all contracts not listed in paragraph (1) of this subsection;

(B) The commission delegates authority to the director and librarian or designee to approve contracts with an overall contract value that exceeds \$1 million as approved by commission order; and

(C) The commission delegates authority to the director and librarian to approve a purchase request or contract listed in paragraph (1) of this subsection for an emergency as defined in 34 TAC §20.25 (relating to Definitions), or to avoid undue material additional cost to the state. The director and librarian shall report any purchase requests or contracts executed by the director and librarian under this authority to the commission chair prior to execution of any such purchase requests or contracts.

(e) Authority to Execute Contracts. The commission delegates authority to the director and librarian to execute all contracts for the agency. This authority may be delegated by the director and librarian to the assistant state librarian or other designee.

(f) Contract Planning. The agency will present to the commission for information a contract plan for the next fiscal year that outlines the agency's anticipated contracting actions that exceed \$500,000. The director and librarian or designee will present updates to the contract plan to the commission for information periodically throughout the fiscal year.

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

Filed with the Office of the Secretary of State on February 14, 2023.

TRD-202300683

Sarah Swanson
General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 463-5474



SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES
13 TAC §2.112, §2.116

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 Texas Administrative Code

§2.112, Eligible and Ineligible Expenses, and §2.116, Uniform Grants Management Standards (UGMS).

BACKGROUND. Government Code, §441.136 (relating to Rules) authorizes the Commission to adopt rules necessary to the administration of the program of state grants. Under this general authority, the Commission has adopted §2.116, incorporating by reference what was previously known as the Uniform Grant Management Standards (UGMS) issued by the former Texas Procurement and Support Services Program of the Texas Comptroller of Public Accounts into its grant program. The Comptroller adopted the Texas Grant Management Standards (TxGMS) in December 2021, replacing UGMS. TxGMS applies to all grants awarded on or after January 1, 2022. The Comptroller also repealed the rules referenced in the Commission's rule. Therefore, the proposed amendments are necessary to bring the Commission's rule up to date with the current standards.

Proposed amendments to §2.116 would update the reference from UGMS to TxGMS in both the rule text and title and delete the reference to the repealed rules.

Proposed amendments to §2.112 update the reference to §2.116 as proposed for amendment.

FISCAL IMPACT. Sarah Jacobson, Director, Library Development and Networking, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Jacobson has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be clarity in Commission rules. There are no anticipated economic costs to persons required to comply with the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the Commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the Commission provides the following government growth impact statement. For each year of the first five years the proposed amendments will be in effect, the Commission has determined the following:

1. The proposed rule will not create or eliminate a government program;
2. Implementation of the proposed rule will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the Commission;

4. The proposed rule will not require an increase or decrease in fees paid to the Commission;

5. The proposed rule will not create a new regulation;

6. The proposed rule will not expand, limit, or repeal an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the proposed rules' applicability; and

8. The proposed rule will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be submitted to Sarah Jacobson, Director, Library Development and Networking Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.009, which authorizes the Commission to adopt a state plan for improving library services consistent with federal goals, and, more generally, §441.006(b)(3), which authorizes the Commission to accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.112. Eligible and Ineligible Expenses.

(a) Except as provided in grant guidelines, competitive grants may fund costs for staff, equipment, capital expenditures, supplies, professional services, and other typical operating expenses, as permitted by §2.116 of this title (relating to Texas Grant [Uniform Grants] Management Standards). The purpose of competitive grants is not for collection development, or other activities primarily focused on the acquisition of library materials or resources.

(b) Except as provided in grant guidelines, competitive grants may not fund the following costs, in addition to those not permitted by §2.116 of this title [(relating to Adoption of Uniform Grants Management Standards)]:

- (1) building construction or renovation;
- (2) food, beverages, awards, honoraria, prizes, or gifts;
- (3) equipment or technology not specifically needed to carry out the goals of the grant;
- (4) transportation/travel for project participants or non-grant funded personnel;
- (5) databases currently offered or similar to ones offered by the agency (i.e., a magazine index database may not be purchased if a comparable one is provided by the agency);

(6) collection development purchases not targeted directly to the grant goals nor integral to the service program;

(7) advertising or public relations costs not directly related to promoting awareness of grant-funded activities; or

(8) performers or presenters whose purpose is to entertain rather than to educate.

§2.116. *Texas Grant [Uniform Grants] Management Standards. [(UGMS)]*

The agency adopts by reference the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts. [The standards adopted by reference have been published as 34 TAC §§20.456 - 20.467.]

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

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 463-5474



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter A, §60.10; Subchapter F, §60.82; Subchapter G, §60.101; Subchapter I, §§60.300, 60.304, 60.305, 60.307, 60.308, and 60.310; and Subchapter J, §§60.400 - 60.406, 60.408, and 60.409; proposes new rules at Subchapter H, §§60.200 - 60.204; Subchapter I, §§60.301, 60.302, 60.309, 60.311, and 60.312; and proposes the repeal of existing rules at Subchapter H, §60.200; and Subchapter I, §60.306 and §60.311, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department, and other laws applicable to the Commission and the Department.

The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The proposed rules update multiple subchapters and sections under Chapter 60 and are part of a larger effort to update the entire chapter. The proposed rules make substantive and clean-up changes to the agency's procedural rules and include changes resulting from staff and strategic planning, the required four-year rule review, and the Department's Sunset legislation.

Staff and Strategic Planning Changes

The proposed rules include changes suggested by the General Counsel's Office and suggested during past strategic planning sessions. The changes include updates to the rules regarding definitions and complaints; reorganization of existing rules; clean up changes in terminology; and editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

Four-Year Rule Review Changes

The proposed rules also include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required rule review of the rules under 16 TAC Chapter 60, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021.)

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, with one of these interested parties commenting on the complaint rule under Subchapter H. The interested party commented that the rules do not include timeframes for resolving complaints and that the complaint process takes too long. The Department did not propose any changes to the rules based on this public comment. Texas Occupations Code §51.252 states that the Department "shall maintain a system to promptly and efficiently act on complaints," and §51.2521 states that the Department "shall assign priorities and investigate complaints based on risk to the public of the conduct alleged in the complaint." There are internal processes and timeframes, priority of violations, case specific issues, and performance measures that effect the timing for complaint resolution. The Department did not include any timeframes for complaint resolution in the proposed rules.

The proposed rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the proposed rules and include updates to the rules regarding definitions, fees, complaints, contested cases, and mediation for contested cases. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to use lower case terminology.

Sunset Bill Statutory Changes

The proposed rules incorporate and reflect the changes made to Texas Occupations Code, Chapter 51, as a result of House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. HB 1560, Article 1, Sections 1.06, 1.07, and 1.08, amended and added provisions in Chapter 51 regarding complaints, specifically under §§51.251, 51.252, and 51.2521. The proposed rules under Subchapter H incorporate and reflect the amended and new statutory provisions regarding complaints.

The proposed rules are necessary to: update the terminology and definitions; align the dishonored payment processing fee with statutory requirements; add a statutory reference regard-

ing negotiated rulemaking; add additional rules regarding complaints; update and reflect the current processes and procedures for contested cases; clarify the existing rules regarding mediation for contested cases; and reorganize and clean up existing rules where necessary. The Department expects to propose additional changes to Chapter 60 in the future in separate rulemakings.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The proposed rules amend §60.10. Definitions. The proposed rules amend the terms and definitions to align with applicable statutes; to provide additional information and clarity; to designate the General Counsel or the General Counsel's designee as the "ADR Administrator"; to relocate certain provisions elsewhere in the rule chapter; to make various clean-up changes; and to make editorial changes to use lower case terminology. The proposed rules also remove unnecessary or unused terms and renumber the remaining terms as necessary.

Subchapter F. Fees.

The proposed rules amend §60.82. Dishonored Payment Device. The proposed rules change the title of the section to "Dishonored Payment Fee." The proposed rules lower the dishonored payment processing fee from \$50 to \$30 to align with Business and Commerce Code §3.506, Processing Fee by Holder of Payment Device, and with the Texas Comptroller Manual of Accounts regarding revenues and returned check fees. The proposed rules replace the definition of "payment device" under §60.10, which is being repealed, with an explanation of authorized forms or methods of payment and dishonored payments. The proposed rules restructure the existing rule; use plain talk language to improve readability and understanding; and make editorial changes to use lower case terminology.

Subchapter G. Rulemaking.

The proposed rules amend §60.101. Negotiated Rulemaking. The existing rule implements Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to negotiated rulemaking. The proposed rules add the statutory reference for context and clarification that the statutory requirement has been implemented through this rule.

Subchapter H. Complaint Handling

Subchapter H is amended to add additional rules regarding complaints. The proposed rules change the title of Subchapter H to "Complaints; Inspections" to reflect the scope of the subchapter.

The proposed rules repeal existing §60.200. Complaints. The repealed provisions are relocated to and replaced with new §60.200 and new §60.201.

The proposed rules add new §60.200. Notice to the Public Regarding Complaints. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule requires a license holder to notify consumers and service recipients of the Department's name, address, phone number, and website address for purposes of filing complaints; specifies how and where this notification must be provided, unless stated otherwise in the program statutes or rules; and provides that information will be made available on the Department's website describing the procedures for filing complaints and for complaint investigation and resolution.

The proposed rules add new §60.201. Filing a Complaint. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule explains the process and timing for filing a complaint against a person who is engaged in an activity or business regulated by the Department and the Department's handling of anonymous complaints.

The proposed rules add new §60.202. Investigation and Priority of Complaints. The new rule explains the Department's responsibilities regarding promptly and efficiently acting on complaints; assigning priorities and investigating complaints based on risk to the public; and dismissing complaints that are inappropriate or without merit.

The proposed rules add new §60.203. Cooperation with Investigation of Complaints. The new rule requires a person to cooperate in a Department investigation of a complaint and to make available all records, notices, and other documents requested by the Department. The new rule also lists prohibited actions in connection with a Department investigation.

The proposed rules add new §60.204. Status and Confidentiality of Complaints. The new rule addresses when the Department will provide the status of a complaint and the requirements on the Department to maintain confidentiality of certain complaints.

Subchapter I. Contested Cases.

Subchapter I is amended to reflect the current processes and procedures for contested cases. New rules are added, and existing rules are amended and reorganized, so that the rules set out the procedural steps in the contested case process. These rules are necessary to comply with Texas Government Code, Chapter 2001, and Texas Occupations Code, Chapter 51, Subchapters F and G.

The proposed rules amend existing §60.300. Purpose and Scope. The proposed rules make technical clean-up changes to the statutory references.

The proposed rules add new §60.301. Notice of Alleged Violation; Notice of Continued License Restrictions. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of alleged violation and the notice of continued license restrictions, and it includes information on requesting a hearing.

The proposed rules add new §60.302. Notice of Proposed Denial. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of proposed denial, and includes information on requesting a hearing.

The proposed rules amend existing §60.304. Disposition by Agreement. The proposed rules update the terminology for consistency purposes.

The proposed rules amend existing §60.305. Place and Nature of Hearings. The proposed rules change the title of the rule to "Contested Case Hearings at SOAH" to reflect the scope of the rule. The proposed rules provide references to SOAH's procedures and information about the Department's contested case hearings at SOAH.

The proposed rules repeal existing §60.306. Request for Hearing and Defaults. The provisions from this repealed rule have been separated into two new rules, §60.301 and §60.302, and

relocated in the subchapter so they are in procedural order in the contested case process.

The proposed rules amend existing rule §60.307. Hearing Costs. The proposed rules change the title of the section to "Costs Associated with a Contested Case" to reflect the scope of the rule. The proposed rules clarify the existing provision under subsection (a), regarding costs associated with making the SOAH hearing record, and align the provision with SOAH rule 1 TAC §155.423. The proposed rules amend the existing provision under subsection (b), regarding costs associated with contested case transcripts, and align the provision with Texas Government Code §2001.059. The proposed rules add a new provision under new subsection (c) to address other possible costs associated with the contested case.

The proposed rules amend §60.308. Proposals for Decision. The proposed rules add new subsection (b) that reflects the current procedures for proposals for decision that are considered by the Commission during a Commission meeting. The proposed rules state that a party may only present the sworn testimony and the information provided during the SOAH hearing or admitted into the SOAH record.

The proposed rules add new §60.309. Motion for Rehearing. The new rule reflects the current processes and procedures for filing and handling a motion for rehearing, and it provides the requirements for the contents of the motion for rehearing.

The proposed rules amend existing §60.310. Final Orders. The proposed rules add a provision to address when a contested case decision or order is final under the Administrative Procedure Act (APA). The proposed rules also remove the provision regarding appeals and costs and relocate that provision to new §60.311.

The proposed rules add new §60.311. Appeal of Final Order. The new rule reflects the current processes and procedures for appealing a final decision or order in a contested case. The new rule provides that the appeal shall be filed and handled in accordance with the APA. The new rule also adds the provision regarding appeals and costs that is relocated from existing §60.310.

The proposed rules repeal existing §60.311. Corrected Orders. The repealed provision has been relocated to new §60.312.

The proposed rules add new §60.312. Corrected Orders. The new rule includes the provision from existing §60.311, which is being repealed.

Subchapter J, Mediation for Contested Cases.

Subchapter J is amended to clarify and make clean-up changes to the existing rules regarding mediation for contested cases. The existing rules in this subchapter implement Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to alternative dispute resolution procedures for contested cases, and Texas Government Code Chapter 2009, Alternative Dispute Resolution for Use by Governmental Bodies.

The proposed rules amend existing §60.400. Alternative Dispute Resolution--Mediation. The proposed rules change the title of the section to "Alternative Dispute Resolution Procedures--Mediation" for clarification. The proposed rules add statutory references for context and clarification that the statutory requirements and provisions have been implemented through the rules in this subchapter. The proposed rules also add an explanation about alternative dispute resolution procedures and the use of media-

tion; separate the existing section into separate subsections to improve readability; update a cross-reference to Subchapter I; make clarifications and clean-up changes; and make an editorial change to use lower case terminology.

The proposed rules amend existing §60.401. Referral of Contested Matter for Mediation. The proposed rules make editorial changes to use lower case terminology.

The proposed rules amend existing §60.402. Appointment of Mediator. The proposed rules change the title of the section to "Appointment of Mediator; Mediator Costs" to reflect the scope of the rule. The proposed rules make clarifications and clean-up changes regarding the appointment of a mediator.

The proposed rules amend existing §60.403. Qualifications of Mediators. The proposed rules change the title of the section to "Qualifications, Standards, and Role of the Mediator" to reflect the scope of the rule. The proposed rules make clean-up changes; add a specific statutory reference regarding the mediation training; include information regarding the role of the mediator that has been relocated from the definition of mediator in §60.10; and add additional information regarding the role of the mediator that reflects the provisions in Texas Civil Practices and Remedies Code §154.053 and the SOAH guidelines on mediation.

The proposed rules amend existing §60.404. Disqualifications of Mediators. The proposed rules change the title of the section to "Disqualification of the Mediator." The proposed rules make an editorial change to use lower case terminology and make a clarification to the existing provisions.

The proposed rules amend existing §60.405. Qualified Immunity of the Mediator. The proposed rules make a technical correction to a statutory reference.

The proposed rules amend existing §60.406. Commencement of Mediation. The proposed rules make editorial changes to use lower case terminology; make clean-up changes to terminology; and include updated references to the notices discussed under Subchapter I.

The proposed rules amend existing §60.408. Agreements. The proposed rules make editorial changes to use lower case terminology.

The proposed rules amend existing §60.409. Confidentiality. The proposed rules make clarification changes to the existing provisions regarding the confidentiality of the mediation communications and documents.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

State Government

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to the State as a result of enforcing or administering the proposed rules.

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

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is an estimated loss in revenue to the State of approximately \$2,900 annually. This

loss is a result of the decrease in the processing fee for a dishonored payment from \$50 to \$30.

Local Government

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon 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.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be having procedural rules that provide greater clarity to license holders, the public, and others who may be subject to the rules. The proposed rules more accurately reflect the current procedures, which provides better notification to the public and license holders of those procedures. The proposed rules also reduce the processing fee for a dishonored payment, which will be less cost for the person whose payment was dishonored. In addition, the proposed rules require cooperation with the Department's investigation of complaints, which could aid in quicker investigation and resolution of complaints.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. None of the changes made by the proposed rules will impose a cost on any licensee, member of the public, or business. The reduction of the processing fee for a dishonored payment will reduce the cost for a person whose payment is dishonored.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules require an increase or decrease in fees paid to the agency. The proposed rules decrease the fees paid to the agency by decreasing the processing fee for a dishonored payment.
5. The proposed rules create a new regulation. The proposed rules create new regulations regarding complaints, motions for rehearing, and appeals of final orders.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand existing regulations regarding the procedures and requirements for dishonored payments; the notices issued in contested cases; the costs associated with contested cases; and mediation for contested cases.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.10

STATUTORY AUTHORITY

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

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552,

656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.10. Definitions.

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

(1) Advisory Board--A board, committee, council, or other entity with multiple members that has as its primary function advising the commission or the department [body that is established by law to advise the Commission or Department on rules, policies, and/or technical matters].

(2) (No change.)

(3) Alternative Dispute Resolution (ADR) Administrator--The trained coordinator designated by the commission to coordinate and oversee the negotiated rulemaking and ADR procedures used by the department; to serve as a resource for any training needed to implement the negotiated rulemaking and ADR procedures; and to collect data concerning the effectiveness of the negotiated rulemaking and ADR procedures. The ADR Administrator also may conduct ADR proceedings, serve as a mediator, or appoint other persons to serve as mediators. The department's general counsel or the general counsel's designee is designated by the commission to serve as the ADR Administrator. [Commission:]

~~[(A) to coordinate and oversee the negotiated rulemaking and ADR procedures used by the Department;]~~

~~[(B) to serve as a resource for any training needed to implement the negotiated rulemaking and ADR procedures; and]~~

~~[(C) to collect data concerning the effectiveness of the negotiated rulemaking and ADR procedures. The ADR Administrator also may conduct ADR proceedings.]~~

(4) Alternative Dispute Resolution (ADR) Procedures or Process--The umbrella term that includes different types of alternative [Alternative] processes to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party. Mediation is one type of alternative dispute resolution (ADR) process.

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

(6) Applicant--Any person seeking a license from the department [Department].

(7) (No change.)

(8) Complainant--Any person who has filed a complaint with the department [Department] against any person whose activities are subject to the jurisdiction of the commission and the department [Department].

(9) Contested case [or proceeding]--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by the commission or the executive director [Commission and/or Executive Director] after an opportunity for adjudicative hearing.

(10) (No change.)

(11) Director of Enforcement--The person who directs and oversees investigations, prosecutions, and other activities of the enforcement division of the department [Texas Department of Licensing and Regulation].

(12) (No change.)

(13) Executive Director--The head administrative official of the department [Texas Department of Licensing and Regulation].

~~[(14) Final Decision Maker--The Commission and/or the Executive Director; both of whom are authorized by law to render the final decision in a contested case.]~~

(14) [(15)] License--A license, certificate, registration, title, commission, or permit issued by the department [Department].

(15) [(16)] License holder--A person who holds a license issued by the department [Department].

(16) [(17)] Mediation--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them. Mediation is one type of alternative dispute resolution (ADR) process.

(17) [(18)] Mediator--The impartial person who presides over a mediation. [The mediator shall encourage and assist the parties in reaching a settlement but may not compel or coerce the parties to enter into a settlement agreement.] The mediator may be a department [Department] employee, an employee from another Texas state agency, or a person in the mediation profession who is not a Texas state employee [("private mediator")].

SUBCHAPTER F. FEES

16 TAC §60.82

STATUTORY AUTHORITY.

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

In addition, the proposed rule is proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rule is are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rule is are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rule.

§60.82. *Dishonored Payment Fee [Device].*

(a) This section applies to any authorized form or method of payment that is issued to the department by an applicant, a license holder, or other person for payment of any required fees or administrative penalties and that is dishonored.

(18) [(49)] Negotiated Rulemaking--A consensus-based process prescribed under Texas Government Code, Chapter 2008, in which the department [Department] develops a proposed rule by using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the rule will affect including those interests represented by the department [Department] itself. [See Negotiated Rulemaking Act, Texas Government Code, Chapter 2008.]

(19) [(20)] Party--A person or state agency named or admitted as a party to participate in a contested case.

(21) Payment Device--Any check, item, paper or electronic payment, or other payment method used as a medium for payment.]

(20) [(22)] Penalty or Administrative Penalty--A monetary fine imposed by the commission or the executive director on a license holder [licensee] or other person who has violated this chapter or a statute or rule governing a program regulated by the department.

(21) [(23)] Person--Any individual, partnership, corporation, organization, association, or other legal entity, including a state agency or governmental subdivision.

(24) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.]

(22) [(25)] Presiding Officer--The commission [Commission] member designated by the Governor to serve as the lead commission [Commission] official as defined under Texas Occupations Code[,] §51.056.

(23) [(26)] Respondent--Any person, regardless of whether the person is licensed or unlicensed, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted by or an order issued by the commission or the executive director.

(24) [(27)] Rule--Any commission [Commission] statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the [department or] commission or the department.

(25) [(28)] Sanction--An action by the commission or executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.

(26) [(29)] SOAH--State Office of Administrative Hearings.

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

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(1) An authorized form or method of payment may include, but is not limited to, a check, credit card, item, paper or electronic payment, electronic funds transfer, or other payment instrument.

(2) A dishonored payment means a payment that is declined or not approved for payment upon presentation to a financial institution.

(b) If a payment issued to the department is dishonored, the department shall charge a processing fee of \$30 to the person who submitted the dishonored payment. This processing fee is in addition to the amount of the original payment submitted to the department that was dishonored.

(c) The department will notify the applicant, license holder, or other person by certified mail that the payment has been dishonored. The applicant, license holder, or other person must pay the required processing fee and the amount of the original payment submitted to the department within 15 days after receipt of notice of the dishonored payment.

(d) If the applicant, license holder, or other person does not pay the processing fee and the amount of the original payment submitted to the department within the required time period, it is a violation of this chapter. The applicant or license holder is subject to administrative enforcement proceedings, including license denial or revocation, and collections proceedings. Other persons are subject to collections proceedings.

[If a payment device issued to the department is dishonored by a payor, the department shall charge a fee of \$50 to the issuer or endorser for processing the dishonored payment device. The department shall notify the obligor, issuer, or endorser of the fee by sending a request for payment of the dishonored payment device and the processing fee by certified mail to the last known address of the person or licensee as shown in the records of the department. If the department has sent a request for payment in accordance with the provisions of this section, the failure of the obligor, issuer, or endorser to pay the processing fee within 15 days after the department has mailed the request is a violation of this chapter and subjects the licensee and the person to administrative enforcement proceedings including license revocation.]

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

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SUBCHAPTER G. RULEMAKING

16 TAC §60.101

STATUTORY AUTHORITY.

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

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.101. Negotiated Rulemaking.

(a) Pursuant to Texas Occupations Code §51.208, it [H] is the commission's policy to engage in negotiated rulemaking procedures under Texas Government Code, Chapter 2008, when appropriate. When the commission finds that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the commission will appoint a convener to assist in determining whether it is advisable to proceed. The convener shall perform the duties and responsibilities contained in Texas Government Code, Chapter 2008.

(c) If the convener recommends proceeding with negotiated rulemaking and the commission adopts the recommendation, the department shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

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

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SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §60.200

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

In addition, the proposed repeals are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed repeals.

§60.200. *Complaints.*

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

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SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §§60.200 - 60.204

STATUTORY AUTHORITY.

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

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802

(Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.200. Notice to the Public Regarding Complaints.

(a) A license holder is required to notify consumers and service recipients of the department's name, mailing address, telephone number, and website address for purposes of directing complaints to the department.

(b) Unless prescribed otherwise in the statutes or rules governing a specific program regulated by the commission and the department, the notification required under subsection (a) shall be included on:

(1) a written contract (paper or electronic) for services of a license holder;

(2) a sign prominently displayed in the license holder's place of business if consumers or service recipients must visit the license holder's place of business for services or products; and

(3) a bill (paper or electronic) for services provided by a license holder.

(c) The department shall make information available to the public describing the procedures for filing complaints with the department and for complaint investigation and resolution by the department. This information shall be available on the department's website.

§60.201. Filing a Complaint.

(a) A complaint against a person who is engaged in an activity or business regulated by the department may be submitted in a form and manner prescribed by the department. A person filing a complaint is encouraged to file the complaint online on the department's website.

(b) A complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the two-year period may be investigated at the discretion of the director of enforcement.

(c) Pursuant to Texas Occupations Code §51.252, the department may accept a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint; however, the department is not required to investigate these anonymous complaints. The department may investigate anonymous complaints at its discretion.

§60.202. Investigation and Priority of Complaints.

(a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department as provided by Texas Occupations Code §51.252.

(b) The department shall assign priorities and investigate complaints based on risk to the public of the conduct alleged in the complaint as provided by Texas Occupations Code §51.2521.

(c) If the department determines at any time that an allegation made or formal complaint submitted by a person is inappropriate or without merit, the department shall dismiss the complaint.

§60.203. Cooperation with Investigation of Complaints.

(a) A license holder or other person must cooperate in an investigation of a complaint conducted by a department employee or designated representative of the department (designated representative).

(b) A license holder or other person must make available to the department employee or designated representative all records, notices, and other documents requested by the department employee or designated representative.

(c) A license holder or other person is prohibited from:

(1) avoiding, refusing to permit, or failing to cooperate in an investigation conducted by a department employee or designated representative;

(2) interfering with an investigation conducted by a department employee or designated representative; or

(3) threatening or intimidating a department employee or designated representative in connection with an investigation.

§60.204. Status and Confidentiality of Complaints.

(a) The department shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

(b) The department shall maintain the confidentiality of complaint and disciplinary information as provided by Texas Occupations Code §51.254, any specific program statute, or other applicable law.

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

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SUBCHAPTER I. CONTESTED CASES

16 TAC §§60.300 - 60.302, 60.304, 60.305, 60.307 - 60.312

STATUTORY AUTHORITY.

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

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.300. Purpose and Scope.

(a) Unless otherwise provided by [the] Texas Occupations Code, Chapter 51; by the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001; by the rules of the State Office of Administrative Hearings (SOAH), 1 TAC Chapter 155; by other law; or by the provisions of this chapter, this subchapter governs the institution, conduct, and determination of all contested cases under the APA.

(b) SOAH acquires jurisdiction over a contested case at certain stages of the adjudicative matter, as prescribed under the APA. SOAH's rules of procedure, 1 TAC Chapter 155, govern during the period when SOAH has jurisdiction over the contested case.

(c) In the case of a conflict between SOAH's rules of procedure and the rules in this subchapter, SOAH's rules of procedure control for the time period starting after the Request to Docket Case form has been filed and concluding after the final amendments or corrections to the proposal for decision have been filed.

(d) The rules in this subchapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the executive director, or the substantive rights of any person or agency.

§60.301. Notice of Alleged Violation; Notice of Continued License Restrictions.

(a) The department shall send a written notice of alleged violation if the department:

(1) seeks an enforcement action against a person for an alleged violation of the statutes and rules of the department or its programs; or

(2) proposes to revoke a person's license or deny a license renewal application based on criminal history.

(b) The department shall send a written notice of continued license restrictions if the department proposes to continue the restrictions on a person's license pursuant to Texas Occupations Code §51.358(c) and (d).

(c) The department shall send the notices under subsections (a) and (b) by certified mail with electronic return receipt.

(d) Any notice or document served upon a person is prima facie evidence of receipt if it is directed to the person's last known complete, correct address as shown by the department's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of non-delivery.

(e) Within twenty days after receiving a notice of alleged violation or notice of continued license restrictions, the person may either: accept the department's determination and recommended administrative penalty, sanction, or both; or make a written request for a hearing on the department's determination. There is a rebuttable presumption that notice is received three days after the notice was mailed.

(f) If the person accepts the department's determination, the department and the person shall enter into an agreement as prescribed under §60.304. If a timely written request for a hearing is made, the department shall refer the department's determination to SOAH for a hearing.

(g) If the person fails to accept the department's determination or fails to request a hearing, the department may propose entry of a default order against the person, unless otherwise provided by applicable law.

(1) The department may present to the commission or the executive director a proposed default order containing findings of fact and conclusions of law.

(2) The department shall send the person a notice of the proposed default order with the deadline after which the default order may be signed.

(3) The commission or executive director shall sign the default order unless, by the deadline in paragraph (2), the person:

(A) accepts the department's determination and enters into an agreement as prescribed under §60.304; or

(B) makes a written request for a hearing on the department's determination, in which case the department shall refer its determination to SOAH for a hearing.

§60.302. Notice of Proposed Denial.

(a) The department shall send a written notice of proposed denial if the department proposes:

(1) to deny an initial license application; or

(2) to deny a person an opportunity to take an examination.

(b) The department shall send the notice of proposed denial under subsection (a) by certified mail with electronic return receipt.

(c) Any notice or document served upon a person is prima facie evidence of receipt if it is directed to the person's last known com-

plete, correct address as shown by the department's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of non-delivery.

(d) After receiving a notice of proposed denial, the person must request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing, unless otherwise provided by applicable law. There is a rebuttable presumption that notice is received three days after the notice was mailed.

(e) If a timely written request is made, the department shall refer the proposed denial to SOAH for a hearing. If a timely written request is not made, the proposed denial is final.

§60.304. Disposition by Agreement.

(a) Disposition by agreement of any contested case may be made by stipulation, agreed settlement, or consent order, unless precluded by law.

(b) The commission may designate its presiding officer [chairperson] or the executive director to adopt or reject stipulations, settlement agreements, or consent orders.

(c) Parties agreeing to disposition by agreement shall prepare written stipulations, consent order, or settlement agreement, containing proposed findings of fact and conclusions of law, which shall be signed by all the agreeing parties and their designated representatives.

(d) Upon receipt of the written stipulations, consent order, or settlement agreement the executive director or the commission may:

(1) adopt the written stipulations, consent order, or settlement agreement and issue a final order;

(2) reject the written stipulations, consent order, or settlement agreement and remand the contested case for a hearing before SOAH;

(3) reject the written stipulations, consent order, or settlement agreement and order further investigation by the department; or

(4) take such other action as the executive director or the commission find just.

§60.305. Contested Case Hearings at SOAH [Place and Nature of Hearings].

(a) Contested case hearings at SOAH are governed by Texas Government Code, Chapter 2001 and the SOAH rules under 1 TAC Chapter 155.

(b) Every effort shall be made to conduct administrative hearings in person in Austin, Texas, or virtually by telephone or videoconference, to achieve the department's mission to ensure effective and economical use of public resources while adhering to the provisions of 1 TAC §155.403.

§60.307. Costs Associated with a Contested Case. [Hearing Costs.]

(a) The costs related to making a record of the SOAH contested case proceeding, including the hearing record, transcripts, and court reporters, [Costs associated with the contested case hearing before SOAH] shall be determined according to the rules in 1 TAC §155.423 [unless determined in accordance with subsection (b)].

(b) Pursuant to Texas Government Code §2001.059, on [On] the written request by a party to a case [or on request of the ALJ], a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This subsection [section] does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. [If only the ALJ requests a transcript, costs will be assessed to the respondent(s) or applicant(s), as appropriate.]

(c) For all other costs associated with the contested case, each party shall be responsible for its own costs, unless otherwise determined by law or rules or agreed upon by the parties in writing.

§60.308. Proposals for Decision.

(a) Proposed decisions for contested cases issued by a SOAH ALJ shall be brought before the commission for decision, in accordance with the APA.

(b) A party may only present the sworn testimony and the information provided during the SOAH hearing or admitted into the SOAH record, including filings of the parties, exceptions, dispositions, and the responses. No new testimony, witnesses, or information shall be allowed after SOAH submits the case to the commission for consideration.

§60.309. Motion for Rehearing.

(a) A person may submit a motion for rehearing to reconsider a decision of the commission in a contested case or reconsider a default order entered by the executive director.

(b) A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

(c) A motion for rehearing shall be filed and handled in accordance with Texas Government Code, Chapter 2001, Subchapter F.

(d) The commission or the executive director may rule on a motion for rehearing.

§60.310. Final Orders.

(a) A decision or order in a contested case shall be in writing and shall be signed by the commission, the executive director, or both, as applicable.

(b) A decision or order in a contested case is final in accordance with Texas Government Code §2001.144. [A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.]

§60.311. Appeal of Final Order.

(a) An appeal of a final decision or order in a contested case shall be filed and handled in accordance with Texas Government Code, Chapter 2001, Subchapter G.

(b) A party who appeals a final decision or order in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

§60.312. Corrected Orders.

The executive director may enter a corrected order to correct a clerical mistake in an order of the commission.

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

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SUBCHAPTER I. CONTESTED CASES

16 TAC §60.306, §60.311

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

In addition, the proposed repeals are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed repeals.

§60.306. *Request for Hearing and Defaults.*

§60.311. *Corrected Orders.*

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

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SUBCHAPTER J. MEDIATION FOR CONTESTED CASES

16 TAC §§60.400 - 60.406, 60.408, 60.409

STATUTORY AUTHORITY.

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

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code,

Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.400. Alternative Dispute Resolution Procedures-- Mediation.

(a) Pursuant to Texas Occupations Code §51.208 and Texas Government Code Chapter 2009, this subchapter establishes the alternative dispute resolution (ADR) procedures for the voluntary settlement of contested cases through the facilitation of an impartial third party. Mediation is the ADR process used by the department.

(b) In addition to the procedures under Subchapter I [§60.304 of this chapter], the department may use [Department uses] mediation and the procedures under this subchapter [as an alternative method] for resolving contested cases.

(c) The procedures in this subchapter are consistent with Texas Government Code, Chapters 2001 and 2009; Texas Civil Practice and Remedies Code, Chapter 154; and the model guidelines for the use of ADR by state agencies developed by SOAH.

§60.401. Referral of Contested Matter for Mediation.

The department's director of enforcement [Department's Director of Enforcement], on behalf of the department [Department], may seek to resolve a contested matter through mediation involving all parties, and if so, shall refer the matter for mediation in accordance with this subchapter.

§60.402. Appointment of the Mediator; Mediation Costs.

(a) For each contested matter referred for mediation, the ADR Administrator, as defined under §60.10, shall either:

(1) preside over the mediation proceeding as the mediator; or

(2) appoint one of the following individuals to serve as the mediator:

(A) a department employee; [assign a Departmental mediator,]

(B) [(3)] an employee [appoint a mediator] from another Texas state agency; or

(C) [(4)] a person in the mediation profession who is not a Texas state employee (private mediator) [appoint a private mediator].

(b) A private mediator may be appointed provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the private mediator; and

(3) the private mediator agrees to be subject to the direction of the ADR Administrator and to all time limits imposed by the ADR Administrator, statute or regulation.

(c) If a private mediator or an employee [a mediator] from another Texas state agency is appointed to serve as the mediator [used], the costs for the services of that mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the private mediator or the other Texas state agency.

(d) Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with the mediation, including without limitation, costs of document reproduction, attorney's fees, consultant fees and expert fees.

(e) The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

§60.403. Qualifications, Standards, and Role of the Mediator [Qualifications of Mediators].

(a) A mediator [All mediators] must have completed a minimum of 40 hours of Texas mediation training as prescribed under Texas Civil Practices and Remedies Code §154.052[; Chapter 154].

(b) A mediator [All mediators] shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

(c) A mediator shall preside over and facilitate the mediation of a contested matter. The mediator shall encourage and assist the parties in reaching a settlement, but may not compel or coerce the parties to enter into a settlement agreement. The mediator is not a decision-maker in the contested matter.

(d) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other. The mediator shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

§60.404. Disqualification of the Mediator. [Disqualifications of Mediators.]

(a) If the mediator is a SOAH ALJ, that person will not be permitted to [also] sit as the ALJ for the case if the contested matter goes to hearing.

(b) If the mediator is an employee of the department [Department] and the dispute does not settle, that mediator will not have any further contact or involvement concerning the contested matter.

§60.405. Qualified Immunity of the Mediator.

The mediator shall have the qualified immunity prescribed by the Texas Civil Practice and Remedies Code[;] §154.055, if applicable.

§60.406. Commencement of Mediation.

(a) Mediation may begin, at the discretion of the director of enforcement [Director of Enforcement], any time [anytime] after the department [Department] anticipates initiation of an adverse action against a person [an applicant or respondent].

(b) The department [Department] may issue a notice of mediation [Notice of Mediation] along with a notice of alleged violation, [Notice of Alleged Violation or with] a notice of continued license restrictions, or a notice of a proposed denial, as described under Subchapter I [of licensure or opportunity to take an examination].

(c) Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.

(d) [(b)] After a Request for Docket Case form has been submitted to SOAH, the contested case is subject to SOAH's procedures under 1 TAC Chapter 155, and it is at the discretion of the ALJ whether mediation may apply or may continue to apply to a contested case.

§60.408. Agreements.

(a) All agreements between or among parties that are reached as a result of mediation must be committed to writing and the terms

of the agreement will be incorporated in an order that is subject to approval by the commission or the executive director [~~Executive Director or Commission~~].

(b) A final written agreement to which the department [~~Department~~] is a signatory that is reached as a result of the mediation is subject to or excepted from required disclosure in accordance with Texas Government Code, Chapter 552.

§60.409. *Confidentiality.*

(a) Except as provided in subsections (c) and (d), a communication relating to the subject matter made by a participant in mediation, whether before or after the institution of formal mediation proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any separate legal [~~further~~] proceeding.

(b) Any notes or records made regarding a mediation are confidential, and participants, including the mediator, may not be required to testify in any separate legal proceeding [~~proceedings~~] relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of a mediation process is admissible or discoverable only if it is admissible or discoverable independent of the mediation.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials in a separate legal proceeding, the issue of confidentiality may be presented to the judge in that proceeding to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.5

The State Board of Education (SBOE) proposes an amendment to §74.5, concerning the academic achievement record. The proposed amendment would add a new requirement that a student who earns a diploma by satisfying the requirements of the Texas First Early High School Completion Program must have successful completion of the program indicated on the academic achievement record, or transcript.

BACKGROUND INFORMATION AND JUSTIFICATION: The 87th Texas Legislature, Regular Session, 2021, passed Senate Bill 1888, adding new Texas Education Code, §28.0253, to establish the Texas First Early High School Completion Program. The Texas Education Agency (TEA), in coordination with the Texas Higher Education Coordinating Board, is required to establish the program to allow public high school students who demonstrate early readiness for college to graduate early from high school. A student is entitled to early high school graduation under the Texas First Early High School Completion Program if the student meets the criteria established by rule by the Texas Higher Education Coordinating Board. Additionally, students who graduate under the program are considered to have earned the distinguished level of achievement and are eligible to receive a scholarship at participating institutions of higher education. The proposed amendment would require school districts and open-enrollment charter schools to indicate on a student's transcript completion of the Texas First Early High School Completion Program.

The SBOE approved the proposed amendment for first reading and filing authorization at its February 3, 2023 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state government. There may be costs to school districts and charter schools associated with required updates to local student information systems in order to implement the requirements of statute. These may include the need for professional development and amendments to district-developed databases. Since the design and format of and data collection for the academic achievement record (high school transcript) are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

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

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing

regulation by requiring school districts and charter schools to report a student's early high school graduation via the Texas First Early High School Graduation Program on the academic achievement record.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be improved documentation of requirements on the academic achievement record and the ability to more effectively transmit that information between school districts and institutions of higher education. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 3, 2023, and ends at 5:00 p.m. on April 7, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2023 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 3, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(13), which requires the State Board of Education to adopt transcript forms and standards for differentiating high school performance for purposes of reporting academic achievement under TEC, §28.025.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(13).

§74.5. Academic Achievement Record (Transcript).

(a) The commissioner of education shall develop and distribute to each school district and institution of higher education the state guidelines for a common academic achievement record and coding system for courses and instructions for recording information on the academic achievement record. Each school district must use the coding system provided by the commissioner.

(b) Following guidelines developed by the commissioner, each school district must use an academic achievement record (transcript) form that includes the following:

- (1) student demographics;

- (2) school data;
- (3) student data; and
- (4) the record of courses and credits earned.

(c) The academic achievement record shall serve as the academic record for each student and must be maintained permanently by the district. Each district must ensure that copies of the record are made available for a student transferring from one district to another. To ensure appropriate placement of a transfer student, a district must respond promptly to each request for student records from a receiving school district.

(d) Any credit earned by a student must be recorded on the academic achievement record, regardless of when the credit was earned.

(e) A student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by the State Board of Education.

(f) A student who completes the requirements for an endorsement shall have the endorsement clearly indicated on the academic achievement record.

(g) A student who earns a performance acknowledgment shall have the performance acknowledgment clearly indicated on the academic achievement record.

(h) A student who earns the distinguished level of achievement shall have the distinguished level of achievement clearly indicated on the academic achievement record.

(i) A student who demonstrates proficiency in speech as specified in §74.11(a)(3) of this title (relating to High School Graduation Requirements) shall have completion of the speech requirement clearly indicated on the academic achievement record.

(j) A student who completes the required instruction in cardiopulmonary resuscitation (CPR) as specified in §74.38 of this title (relating to Requirements for Instruction in Cardiopulmonary Resuscitation (CPR)) in Grade 9, 10, 11, or 12 shall have completion of the CPR instruction clearly indicated on the academic achievement record.

(k) A student who completes the required instruction on proper interaction with peace officers shall have completion of the instruction clearly indicated on the academic achievement record.

(l) A student who completes and submits a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) or submits the Texas Education Agency-approved opt-out form shall have the completion of the financial aid application requirement clearly indicated on the academic achievement record.

(m) A student who satisfies a languages other than English graduation credit requirement by successfully completing a dual language immersion program at an elementary school in accordance with §74.12(b)(5)(F) of this title (relating to Foundation High School Program) shall have the credit clearly indicated on the academic achievement record.

(n) A student who earns a high school diploma by satisfying the requirements of the Texas First Early High School Completion Program in accordance with Chapter 21, Subchapter D, of this title (relating to the Texas First Early High School Completion Program) shall have completion of the program and the distinguished level of achievement clearly indicated on the academic achievement record.

(o) [(#)] A student who completes all graduation requirements except for required end-of-course assessment instruments may be issued a certificate of coursework completion. The academic achieve-

ment record will include a notation of the date such a certificate was issued to the student.

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

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Cristina De La Fuente-Valadez

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§535.1, 535.3 - 535.5, 535.20, 535.31, 535.33, 535.34, 535.43, 535.45, 535.50 - 535.53, 535.57, 535.58, 535.60, 535.61, 535.63 - 535.67, 535.71, 535.72, 535.74, 535.75, 535.82, 535.121, 535.122, 535.133, 535.141, 535.147, 535.148, 535.208 - 535.210, 535.213, 535.214, 535.218 - 535.220, 535.224, 535.400 - 535.405 and new 535.120 in Chapter 535, General Provisions. First, the proposed changes to §535.64 streamline the rule and modify two of qualifying course approval forms that are adopted by reference. Although the proposed changes remove the specific topics and units listed in the rule itself, those topics and units will continue to be listed in the forms adopted by reference. The proposed changes to the agency's Real Estate Brokerage course approval form are being made to better address the broker-agent relationship and associated responsibilities. The proposed changes to the Property Management course outline (being renamed *Residential* Property Management) are made to more accurately reflect the agency's jurisdiction and ensure relevancy. These course approval form revisions were recommended by the Education Standards Advisory Committee.

Next, the proposed changes to §535.218(f) serve to extend the amount of time an instructor of a ride-along inspection course can provide a certificate of course completion to receive continuing education credit. Now, such instructors can provide documentation within the instructor's current license period for a course taught within that same term. The proposed changes were recommended by the Texas Real Estate Inspector Committee.

The remainder of the proposed amendments to Chapter 535 are made as a result of the Commission's quadrennial rule review. The proposed changes update terminology for consistency and clarity throughout the chapter. Additionally, the following proposed changes are being made:

- Subsections (a) of 22 TAC §§535.51, 535.208, and 535.400 are being amended to correct a typographical error in the subsection.

- In 22 TAC §535.52(b)(4), the term "denial" is added to better reflect current agency practice.

- The proposed change in subsection (j)(1) of §535.65 is made to account for the agency's updated education reporting system, whereby providers can post course credit on behalf of certain students.

- The proposed changes to 22 TAC §535.57 are being made to better reflect current contractual provisions.

- In 22 TAC §535.58 and §535.133, proposed changes are made to remove references to residency requirements, which were removed from Chapter 1101, Texas Occupations Code, as a result of the agency's most recent Sunset review.

- The proposed removal of the venue provision in subsections (j)(2) of 22 TAC §535.61, (b)(5) of §535.67, and (e)(2) of §535.71 is made to be consistent with current State Office of Administrative Hearing processes.

- The proposed changes to 22 TAC §§535.63, 535.72, 535.74, 535.214, and 535.218 are being made to reflect the fact that in 2021, a new eight-hour non-elective course--the Inspector Legal and Ethics and Standards of Practice Review--replaced the two four-hour courses in 2021.

- The proposed changes to 22 TAC §535.213 are also being made to streamline the rule. The topics and units will continue to be listed in the forms adopted by reference.

- The proposed additions to 22 TAC §535.65 are being made to clarify the timing requirements for execution of pre-enrollment agreements and certain distance education delivery requirements for providers. The proposed change to subsection (i)(2) corrects a rule reference.

- The proposed change in 22 TAC §535.66(c)(1) is made to reflect current course approval practice by the Texas Higher Education Coordinating Board.

- In 22 TAC §535.67(c) and (d), the time period is being proposed to change from 15 to 14 days to be more consistent with other similar rules.

- The proposed removal of the term "author" in 22 TAC §535.72(h)(1)(B) is being made because the agency is the author of these courses.

- The proposed changes to 22 TAC §535.75(d) clarify that a provider is not prohibited from providing a course completion certificate to a student.

- Proposed new 22 TAC §535.120 makes clear that a license holder cannot engage in real estate brokerage activity while on inactive status. Although this is currently prohibited by statute, there was no corresponding, discrete rule.

- The proposed changes to §535.141 are made to better track Chapter 1101, Occupations Code, and to better reflect the potential for consumer harm. The proposed change in now subsection (c)(2)(D) corrects a rule reference. Finally, subsection (i) is removed to more appropriately reflect agency practice and jurisdiction.

- Subsections (f) and (g) of 22 TAC §535.148, as well as the form adopted by reference, are amended to reflect updated terminology used by the Texas Department of Licensing and Regulation.

- The proposed repeal of certain language in §535.209 and §535.213 reflects the expiration of those sections by rule.

- The proposed repeal of subsection (c) in 22 TAC §535.218 is the result of duplicative language. Subsection (d)(1) is removed to account for the scenario whereby an inspector renews the inspector's license after the license's expiration date.

- The proposed changes to 22 TAC §535.219 correct a reference to another rule.

- The proposed changes to 22 TAC §535.224 more fully cite the applicable rules.

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

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as ensuring relevant education for license holders.

Except as noted below, for each year of the first five years the proposed amendments are in effect, the amendments will not:

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

The proposed amendments to §§535.58, 535.133, and 535.141(i) will limit an existing regulation to correspond with applicable law, and new 22 TAC §535.120 will create a new regulation in order to provide greater consumer protection through clarity to license holders regarding conducting licensed activity while on an inactive license status.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

22 TAC §535.1

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.1. Definitions.

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

(1) Act--~~Chapter 1101~~, Texas Occupations Code~~;~~ ~~Chapter 1101~~.

(2) Business entity--A domestic or foreign corporation, limited liability company, partnership or other entity authorized under the Texas Business Organizations Code to engage in [the] real estate brokerage business in Texas and required to be licensed under the Act.

(3) Chapter 1102--~~Chapter 1102~~, Texas Occupations Code~~;~~ ~~Chapter 1102~~.

(4) Commission--The Texas Real Estate Commission.

(5) Compensation--A commission, fee, or other valuable consideration for real estate brokerage services provided by a license holder under the Act.

~~[(6) Delivered--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder or an applicant.]~~

(6) ~~[(7)]~~ Executive Director--The Executive Director of the Texas Real Estate Commission.

(7) ~~[(8)]~~ Foreign broker--A real estate broker licensed in another country, territory, or state other than Texas.

(8) ~~[(9)]~~ License--Any Commission license, registration, certificate, approval, or similar form of permission required by law.

(9) ~~[(10)]~~ License holder--A person licensed or registered by the Commission under Chapter 1101 or 1102, Texas Occupations Code.

(10) ~~[(11)]~~ Place of business--A place where the license holder meets with clients and customers to transact business.

(11) ~~[(12)]~~ Trade Association--A [a] nonprofit voluntary member association or organization:

(A) whose membership consists primarily of persons who are licensed as real estate license holders and pay membership dues to the association or organization;

(B) that is governed by a board of directors elected by the members; and

(C) that subscribes to a written code of professional conduct or ethics.

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

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SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §§535.3 - 535.5, 535.20

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.3. *Compensation to or Paid by a Sales Agent [Salesperson].*

A sales agent [salesperson] may not receive a commission or other valuable consideration except with the written consent of the sales agent's [salesperson's] sponsoring broker or the broker who sponsored the sales agent [salesperson] when the sales agent [salesperson] became entitled to the commission or other valuable consideration. A sales agent [salesperson] may not pay a commission or other valuable consideration to another person except with the written consent of the sales agent's [salesperson's] sponsoring broker.

§535.4. *License Required.*

(a) The Act applies to any person acting as a real estate broker or sales agent while physically within Texas, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, email, or other medium is acting within Texas if the real property concerned is located wholly or partly in Texas.

(b) This section does not prohibit cooperative arrangements between foreign [~~non-resident~~] brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this chapter (relating to Unlawful Conduct; Splitting Fees) [~~title~~].

(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or sales agent to show a property. For purposes of this section, to "show" a property includes causing or permitting the property to be viewed by a prospective buyer or tenant, unlocking or providing access onto or into a property for a prospective buyer or tenant, and hosting an open house at the property.

(d) A license holder may permit a prospective tenant unescorted access to view a property available for rent or lease only if:

- (1) the property is vacant, meaning no person lives at, and no personal property except property intended to remain or convey is stored at, the property;
- (2) the license holder employs a method to control access and verify the identity of the prospective tenant; and
- (3) the property owner has signed a written consent that sets out in bold print in at least 12-point font that:

(A) the property owner is aware that unescorted access may occur; and

(B) specifies whether the broker enabling unescorted access or the property owner will be responsible for any damage that results from such unescorted access.

(e) The employees, agents, or [s] associates of a licensed broker must be licensed as brokers or sales agents if they direct or supervise other persons who perform acts for which a license is required.

(f) A real estate license is required for a person to solicit listings or to negotiate in Texas for listings.

(g) A business entity owned by a broker or sales agent which receives compensation on behalf of the license holder must be licensed as a broker under the Act.

(h) A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if the person has the authority to:

- (1) use the rent to pay for services related to management of the property;
- (2) determine where to deposit the rent; or
- (3) sign checks or withdraw money from a trust account.

(i) For purposes of subsection (h) of this section, a single-family residential real property unit includes a single-family [~~single family~~] home or a unit in a condominium, co-operative, row-home, or townhome. The term does not include a duplex, triplex, or four-plex unless the units are owned as a condominium, cooperative, row-home, or townhome.

(j) A person must be licensed as a broker to operate a rental agency.

(k) A real estate license is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale, purchase, rent, or lease of its parent corporation's real property.

(l) A person who arranges for a tenant to occupy a residential property must have a real estate license if the person:

- (1) does not own the property or lease the property from its owner;
- (2) receives valuable consideration; and
- (3) is not exempt under the Act.

(m) A real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent, or lease, including the operation of a service which finds apartments or homes.

(n) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.

(o) A person must be licensed as a broker or sales agent if, for compensation, the person:

- (1) advertises for others regarding the sale, purchase, rent, or lease of real property;
- (2) accepts inquiries received in response to such advertisements; and

(3) refers the inquiry to the owner of the property.

§535.5. *License Not Required.*

(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a broker or sales agent.

(b) A person who owns property jointly may sell and convey title to his or her interest in the property, but to act for compensation or with the expectation of compensation as an agent for the other owner, the person must be licensed unless otherwise exempted by the Act.

(c) A real estate license is not required for an individual employed by a business entity for the purpose of buying, selling, or leasing real property for the entity. An entity is considered to be an owner if it holds record title to the property or has an equitable title or right acquired by contract with the record title holder. An individual employed by a business entity means a person employed and directly compensated by the business entity. An independent contractor is not an employee.

(d) Trade associations or other organizations that provide an electronic listing service for their members, but do not receive compensation when the real estate is sold, are not required to be licensed under the Act.

(e) Auctioneers are not required to be licensed under the Act when auctioning real property for sale. However, a licensed auctioneer may not show the real property, prepare offers, or negotiate contracts unless the auctioneer is also licensed under the Act.

(f) An answering service or clerical or administrative [~~secretarial~~] employees identified to callers as such to confirm information concerning the size, price, and terms of property advertised are not required to be licensed under the Act.

§535.20. *Referrals from Unlicensed Persons.*

(a) Referring a prospective buyer, seller, landlord, or tenant to another person in connection with a proposed real estate transaction is an act requiring the person making the referral to be licensed if the referral is made with the expectation of receiving valuable consideration. For the purposes of this section, the term "valuable consideration" includes but is not limited to:

- (1) money;
- (2) gifts of merchandise having a retail value greater than \$50;
- (3) rent bonuses; and
- (4) discounts.

(b) A person is not required to be licensed as a real estate broker or sales agent [~~salesperson~~] if all of the following conditions are met.

- (1) The person is engaged in the business of selling goods or services to the public.
- (2) The person sells goods or services to a real estate license holder who intends to offer the goods or services as an inducement to potential buyers, sellers, landlords or tenants.
- (3) After selling the goods or services to the real estate license holder, the person refers the person's customers to the real estate license holder.
- (4) The payment to the person for the goods or services is not contingent upon the consummation of a real estate transaction by the person's customers.

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

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Texas Real Estate Commission

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For further information, please call: (512) 936-3284



SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §§535.31, 535.33, 535.34

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.31. *Attorneys at Law.*

An attorney licensed and eligible to practice law in Texas is exempt from the requirements of the Act but cannot sponsor real estate sales agents [~~salespersons~~] or act as the designated broker for a licensed business entity unless the attorney is also licensed as a real estate broker. This provision does not waive the standards of eligibility and qualification elsewhere established in the Act.

§535.33. *Public Officials.*

Public officials and employees of governmental or quasi-governmental units are exempt from the requirement of being licensed as a real estate broker or sales agent [~~salesperson~~] while performing their official duties.

§535.34. *Sales Agents* [~~Salespersons~~] *Employed by an Owner of Land and Structures Erected by the Owner.*

(a) For the purposes of the Act and this title, "sales agent [~~salesperson~~], employed by an owner" means a person employed and directly compensated by an owner. An independent contractor is not an employee.

(b) Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid to another person is considered evidence of employment.

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

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SUBCHAPTER D. THE COMMISSION

22 TAC §535.43, §535.45

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.43. *Education Standards Advisory Committee.*

(a) The Commission establishes an Education Standards Advisory Committee to regularly review and revise curriculum standards, course content requirements and instructor qualifications for qualifying and continuing education courses.

(b) The committee consists of 12 members appointed by the Commission as follows:

(1) Seven members who are license holders and who have been engaged in the practice of real estate for at least five years before the member's appointment and who are actively engaged in that practice;

(2) Four education members who are real estate instructors or owners of real estate schools, accredited by the Commission, that provide qualifying or continuing education;

(3) One member who represents the public.

(c) The Commission may appoint a non-voting member from the Commission.

(d) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Members of the committee serve staggered two-year terms. The terms of the committee members expire as follows:

(1) on December 31 of each even-numbered year, the terms of four license holder members and two education members expire; and

(2) on December 31 of each odd-numbered year, the terms of three license holder members, two education members, and the public member expire.

(f) A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the Commission shall appoint a person to fill the unexpired term.

(g) At a regular meeting in January of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(h) The Commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1101 or Chapter 1102.

(i) If the Executive Director [~~executive director~~] of the Commission has knowledge that a potential ground for removal exists, the Executive Director [~~executive director~~] shall notify the presiding officer of the Commission that the potential ground exists.

(j) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(k) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the Commission.

(l) A quorum of the committee consists of seven members.

(m) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(n) The secretary of the committee shall work with Commission staff to prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the Commission.

(o) At least twice a year, the Committee Chair shall report on the activities of the Committee to the Commission. The Committee may submit its written recommendations concerning the requirements or qualifications, as applicable, for real estate education providers, instructors, and courses to the Commission at any time the Committee deems appropriate. If the Commission submits a rule to the Committee for development, the chair [~~chairman~~] of the Committee or the chair's [~~chairman's~~] designate shall report to the Commission after each meeting at which the proposed rule is discussed on the Committee's consideration of the rule.

(p) The committee is automatically abolished on September 1, 2031 unless the Commission subsequently establishes a different date.

§535.45. *Certain Uses of Seal, Logo, or Name Prohibited.*

A license holder[, ~~certificate holder, registrant~~] or provider may not use all or part of the seal, logo, or name of the Commission or another governmental agency in a manner that implies that the person:

(1) is a governmental agency;

(2) is endorsed by the Commission or other agency other than as a license holder[, ~~certificate holder, registrant,~~] or provider; or

(3) holds a special status that the Commission or other agency has not granted.

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

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.50 - 535.53, 535.57, 535.58

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.50. Definitions.

The following words and terms, when used in Subchapter E, F, or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise or a definition from that subchapter supercedes the definition.

- (1) Applicant--A person seeking a license, certificate, registration, approval, or permit from the Commission.
- (2) Broker Responsibility Course--The course required by §1101.458 of the Act.
- (3) Designated broker--An individual holding an active Texas real estate broker license designated by a business entity licensed by the Commission [~~commission~~] to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company, or a general partner of a partnership.
- (4) Hour--Fifty minutes of actual session time.
- (5) Non-elective Courses--The legal update courses required by §1101.455 of the Act and the broker responsibility course required by §1101.458 of the Act.
- (6) Related course--A course determined to be acceptable by the Commission [~~commission~~] to count towards related credit. The Commission [~~commission~~] will periodically publish lists of acceptable real estate related courses.

§535.51. General Requirements for a Real Estate License.

(a) Application.

- (1) A person who intends to be licensed by the Commission must [file an application for the license]:
 - (A) file an application for the license through the online process approved by the Commission[;] or
 - [(B)] on the form prescribed by the Commission for that purpose; and
 - (B) [(C)] submit the required fee under §535.101 of this chapter [title] (relating to Fees).
- (2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

- (1) To be eligible for a real estate license, an applicant must:
 - (A) meet the following requirements at the time of the application:
 - (i) be 18 years of age;
 - (ii) be a citizen of the United States or a lawfully admitted alien;
 - (B) comply with the fingerprinting, education, experience and examination requirements of the Act; and
 - (C) meet the honesty, trustworthiness, and integrity requirements under the Act.
- (2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.
- (c) Termination of application. An application is terminated and is subject to no further evaluation or processing if:
 - (1) the applicant fails to satisfy a current, education, experience, or examination requirement within one year from the date the application is filed;
 - (2) the applicant fails to submit a required fee within twenty (20) days after the Commission makes written request for payment;
 - (3) the applicant fails to provide information or documentation requested by the Commission within one year from the date the application is filed; or
 - (4) the applicant fails to provide fingerprints to the Department of Public Safety within one year from the date the application is filed.
- (d) Completion of applicable education and experience.
 - (1) An applicant is not eligible to take an [a qualifying] examination for a license until the Commission has received evidence of completion of all education and experience required by this subchapter.
 - (2) The Commission will not grant credit to an applicant for completing a course with substantially the same content as a course for which the applicant received credit within the previous two-year period.
 - (3) Except as provided by this subchapter and the Act, the Commission will not accept a person's license in another state to meet experience requirements.
- (e) Examination. An applicant must take and pass a licensing [written] examination in accordance with §535.57 of this chapter (relating to Examinations) [title].

§535.52. Fitness Requirements for Individual Applicant.

- (a) The Commission may deny a license to an applicant who fails to satisfy the Commission as to an individual applicant's honesty, trustworthiness, or integrity under the Act, [Texas Occupations Code] Chapter 1102, and the rules of the Commission.
- (b) Conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness or integrity includes, but is not limited to:

(1) a plea of guilty or nolo contendere to or a conviction of any offense listed in §541.1 of this title (relating to Criminal Offense Guidelines);

(2) failing to successfully or satisfactorily complete any term or condition of parole, supervised release, probation, or community supervision;

(3) providing false or misleading information to the Commission;

(4) disciplinary action taken against, or the surrender or denial of, any professional or occupational license or registration, in this state, any other state, or the federal government;

(5) engaging in activities for which a license or registration is required without having the legal authorization to do so, in this or any other state;

(6) violating any provision of the Act;

(7) violating any provision of the rules of the Commission;

(8) failing to pay a judgment (including any court-ordered costs, fees, penalties, or damages)[,] that is not otherwise discharged in bankruptcy;

(9) failing to provide information or documentation related to fitness requirements not later than the 60th day after the date the Commission sends a written request to an applicant; and

(10) failing to comply with any term of an administrative order issued by this state, any other state, or the federal government, including failure to pay an administrative penalty.

§535.53. *Business Entity; Designated Broker.*

(a) Business Entity.

(1) A business entity must be qualified to transact business in Texas to receive, maintain, or renew a broker's [broker] license.

(2) A Franchise Tax Account Status page from the Texas Comptroller of Public Accounts issued within 21 days prior to the date of its license or renewal application constitutes evidence of being qualified to transact business in Texas.

(3) A business entity must notify the Commission not later than the 10th day after the date it receives notice that it is not qualified to transact business in Texas.

(4) A foreign business entity must meet the additional requirements of §535.132 of this chapter (relating to Eligibility for Licensure) to be eligible for a broker's license.

(b) Designated Broker.

(1) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate an individual holding an active Texas real estate broker license in good standing with the Commission to act for it.

(2) An individual licensed broker is not in good standing with the Commission if:

(A) the broker's license is revoked or suspended, including probated revocation or suspension;

(B) a business entity licensed by the Commission while the broker was the designated broker for that business entity had its license revoked or suspended, including probated revocation or suspension, in the past two years;

(C) the broker has any unpaid or past due monetary obligations to the Commission, including administrative penalties,

Real Estate Recovery Trust Account payments, or [and] Real Estate Inspection Recovery Fund payments; or

(D) a business entity licensed by the Commission has any unpaid or past due monetary obligations to the Commission, including administrative penalties or [and] Real Estate Recovery Trust Account payments, that were incurred while the broker was the designated broker for the entity.

(3) Regardless of the type of business entity, the designated broker must have managing authority for [be a managing officer of] the business entity.

(4) The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act.

(5) To obtain or renew a license, or upon any change in the business entity's designated broker, the entity must provide to the Commission:

(A) proof of the designated broker's current status as a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner for that entity; and

(B) if the designated broker does not own at least 10 percent of the business entity, proof that the business entity maintains errors and omissions insurance:

(i) in at least the minimum coverage limits required by the Act; and

(ii) that provides coverage for losses due to a violation of the Act or this Chapter.

(6) A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended, or revoked.

§535.57. *Examinations.*

(a) Administration of licensing examinations.

(1) An examination required for any license issued by the Commission will be conducted by the testing service with which the Commission has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Commission and the testing service.

(B) Except as otherwise provided by law, the [The] examination fee must be paid each time the examination is taken.

(2) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. [The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.]

(3) To be authorized for admittance to an examination, the applicant must present to the testing service administering the examinations appropriate documentation required by the testing service under contract with the Commission. The testing service shall require official photo-bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(4) An applicant is permitted to use certain hand-held calculators. If a calculator has printout capability, the testing service must approve use of such calculator before the examination. No other electronic devices are permitted.

(b) Conduct during examination.

(1) The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any applicant, license holder, or education provider accredited by the Commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the Commission:

(A) obtaining or attempting to obtain specific questions or answers from an applicant, a Commission employee, or any person hired by or associated with the testing service;

(B) removing or attempting to remove questions or answers from an examination site; or

(C) providing or attempting to provide examination questions or answers to another person.

(2) The Commission, or the testing service under contract with the Commission, may file theft charges against any person who removes or attempts to remove an examination or any portion thereof or any ~~written~~ material furnished with the examination whether by actual physical removal or by transcription.

(c) Passing Scores. A broker applicant must attain a passing score of at least 75% in each portion of the broker licensing examination. A sales agent applicant must attain a passing score of at least 70% in each portion of the sales agent licensing examination.

(d) Waiver of examination requirement for licensure.

(1) The Commission shall waive the examination requirement for an applicant for a broker license who has been licensed as a broker in this state within two years before the filing of the application. The Commission shall waive the examination requirement for an applicant for a sales agent license who has been licensed in this state as a broker or sales agent within two years before the filing of the application.

(2) The Commission may waive the national portion of the examination of an applicant for a broker or sales agent license if the applicant maintains an active license in another state equivalent to the license being applied for, and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.

(e) Examination results for the national part and state part of the examination are valid for a period of one year from the date each part of the examination is passed.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Commission that the applicant has completed additional mandatory qualifying education listed in §535.64(a) of this chapter (relating to Content Requirements for Qualifying Real Estate Courses) as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 30 hours;

(2) for an applicant who failed the state part of the examination, 30 hours; and

(3) for an applicant who failed both parts of the examination, 60 hours.

§535.58. *License for Military Service Members, Veterans, or Military Spouses.*

(a) Definitions.

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

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

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

(b) Except as otherwise provide by this section:

(1) a person applying for a sales agent or broker license under this chapter must comply with all requirements of §535.51 of this chapter (relating to General Requirements for a Real Estate License) [title]; and

(2) a person applying for an inspector license under this chapter must comply with all requirements of §535.208 of this chapter (relating to Application for a License) [title].

(c) Expedited application.

(1) The Commission shall process a license for an applicant who is a military service member, military veteran, or military spouse on an expedited basis.

(2) If the applicant holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas, the Commission shall issue the license as soon as practicable after receipt of the application.

(d) Waiver of fees and requirements.

(1) The Commission shall waive application and examination fees for an applicant who is a:

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

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

(2) The Executive Director may waive any other requirements for obtaining a license for an applicant who:

(A) meets the requirements of subsection (c)(2) of this section; or

(B) held a license in Texas within the five years preceding the date the application [applications] is filed with the Commission.

(e) Credit for military service.

(1) For an applicant who is a military service member or veteran, the Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

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

(f) Alternate methods of competency. The Commission may accept alternative methods for demonstrating an applicant's competency in the place of passing the specific licensing examination, or completing education and/or experience required to obtain a particular license. Based on the applicant's circumstances and the requirements of a particular license, the Commission may consider any combination of the following as alternative methods of demonstrating competency:

- (1) education;
- (2) continuing education;
- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the Executive Director [executive director].

(g) Limited reciprocity for military spouses.

(1) A person who is a military spouse who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas who wants to practice in Texas in accordance with §55.0041, Occupations Code, must:

(A) notify the Commission of the person's intent to practice in Texas on a form approved by the Commission; and

(B) submit[:]

~~[(#)]~~ proof of Texas residency;]

~~[(##)]~~ a copy of the military identification card issued to the person; and

(2) Upon receipt of the documents required under paragraph (1) of this subsection, the Commission will:

(A) verify that the person is currently licensed and in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

(B) upon confirmation from the other jurisdiction that the person is currently licensed and in good standing with that jurisdiction, issue a license to the person for the same period in which the person is licensed or certified by the other jurisdiction.

(3) A person may not practice in Texas in accordance with this subsection without receiving confirmation from the Commission that the Commission has verified that the person is currently licensed and in good standing with another jurisdiction. Confirmation is provided by the Commission when the person is issued a license as provided for in paragraph (2) of this subsection.

(4) A license issued under this subsection may not be renewed.

(5) After expiration of the initial license, if a person wants to continue to practice in accordance with this subsection, it is the responsibility of the person to seek confirmation from Commission that the person continues to meet the requirements to practice under this subsection by submitting a form approved by the Commission certifying that:

(A) the person is still currently licensed and in good standing with another jurisdiction with substantially equivalent licensing requirements to Texas; and

(B) the person's spouse is still stationed at a military installation in this state.

(6) Upon verification by Commission that the person still meets the requirements under this subsection, the Commission will issue another license for the same period in which the person is currently licensed or certified by the other jurisdiction.

(7) The time period for which a person may practice under this subsection without meeting the requirements for licensure in Texas is limited to the lesser of:

(A) the period during which the person's spouse is stationed at a military installation in this state; or

(B) three years.

(8) A person authorized to practice in this state under this subsection must comply with all other laws and regulations applicable to the license, including any sponsorship 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.

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SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §§535.60, 535.61, 535.63 - 535.67

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.60. Definitions.

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

(1) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(2) Distance Education delivery--A method of course delivery other than classroom delivery, including online and correspondence delivery.

(3) Combination delivery--A combination of classroom and distance education where at least 50% of the course is offered through classroom delivery.

(4) Instructor--A person chosen by a provider to teach qualifying courses.

(5) Legal Update Courses--Required [required] courses created for and approved by the [Texas Real Estate] Commission to satisfy the eight hours of continuing education required by §1101.455 of the Act.

(6) Mandatory qualifying course--A qualifying course that an applicant is required to take to fulfill licensing requirements as mandated by §1101.358 of the Act.

(7) Elective [~~Other~~] qualifying course--A qualifying course, other than a mandatory qualifying course, for which the subject matter of the course is specified by the Act or Commission rule, that an applicant may [is required to] take to fulfill licensing requirements.

(8) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(9) Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, or Commission rule; that offers a course for which qualifying credit may be granted by the Commission to a license holder or applicant.

(10) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the Commission.

(11) Scenario-based learning--The use of scenarios to support active learning strategies such as problem-based or case-based learning where students must apply their subject knowledge, critical thinking and problem-solving [problem solving] skills in a real-world context.

(12) Topic--Subject matter that must be covered in a specific course as defined by the Act, Chapter 1102 and this chapter.

(13) Unit--A subtopic that must be covered within a topic.

§535.61. Approval of Providers of Qualifying Courses.

(a) Application for approval.

(1) Unless otherwise exempt under subsection (b) of this section, a person desiring to be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 of this chapter (relating to Fees) or §535.210 of this chapter [title] (relating to Fees);

(C) submit the statutory bond or other security acceptable to the Commission under §1101.302 of the Act; and

(D) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(3) An approved provider is permitted to offer courses in real estate, easement or right-of-way, and real estate inspection that have been approved by the Commission.

(b) Exempt Providers.

(1) The following persons may submit real estate qualifying courses for approval for credit in §535.62(i) of this subchapter (relating to Approval of Qualifying Courses) without becoming an approved provider of qualifying courses:

(A) a person approved by a real estate regulatory agency to offer qualifying real estate courses in another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter (relating to Credit for Courses Offered by Accredited Colleges or Universities) where courses are offered in accordance with national or regional accreditation standards;

(C) a post-secondary educational institution established in and offering qualifying real estate courses in another state;

(D) a United States armed forces institute; and

(E) a nationally recognized professional designation institute or council in the real estate industry.

(2) The following persons may submit real estate inspector qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a provider approved by an inspector regulatory agency of another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter where courses are offered in accordance with national or regional accreditation standards;

(C) a United States armed forces institute;

(D) a unit of federal, state or local government;

(E) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(F) a professional trade association in the inspection field or in a related technical field; or

(G) an entity whose courses are approved and regulated by an agency of this state.

(3) The following persons may submit easement or right-of-way qualifying courses for approval for credit in §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) an accredited college or university in accordance with §535.66 of this subchapter where courses are offered in accordance with national or regional accreditation standards; and

(B) a United States armed forces institute.

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses; and

(3) that any proposed facilities will be adequate and safe for conducting courses.

(d) Financial review. An applicant shall provide the following information to enable the Commission to determine if an applicant has sufficient financial resources to conduct its proposed operations:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current income statement and balance sheet;

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(e) Insufficient financial condition. The existence of any of the following conditions shall constitute prima facie evidence that an applicant's financial condition is insufficient:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the approved provider's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the approved provider for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) the execution of a writ of garnishment on any of the assets of the approved provider.

(f) Approval notice. An applicant shall not act as or represent itself to be an approved provider until the applicant has received written notice of approval from the Commission.

(g) Period of initial approval. The initial approval of a provider of qualifying courses is valid for four years.

(h) Statutory bond or other security. An approved provider whose statutory bond or other security has been cancelled will be placed on inactive status until the bond or security is reinstated.

(i) Payment of an annual operation fee.

(1) An approved provider shall submit the Commission approved form and pay an annual operation fee prescribed by §535.101 of this chapter [title] no later than the last day of the month of each anniversary date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status and unable to offer courses until the annual fee is paid.

(4) The Commission will not give credit for courses offered by a provider on inactive status.

(j) Denial [~~Disapproval~~] of application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of denial [~~disapproval~~] to the applicant.

(2) The denial [~~disapproval~~] notice, applicant's request for a hearing on the denial [~~disapproval~~], and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Texas Government Code, [~~Chapter 2001,~~] and Chapter 533 of this title (relating to Practice and Procedure). [~~Venue for any hearing conducted under this section shall be in Travis County.~~]

(k) Renewal.

(1) A provider may not enroll a student in a course during the 60-day period immediately before the expiration of the provider's current approval unless the provider has submitted an application for renewal for another four year period not later than the 60th day before the date of expiration of its current approval.

(2) Approval or disapproval of a renewal shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (1) of this section.

(3) The Commission will not require a financial review for renewal if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(4) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

(l) Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be:

(A) calculated for each license category for which the provider offers courses and an examination is required; and

(B) displayed on the Commission website by license category.

(2) A student is affiliated with a provider under this subsection if the student took the majority of his or her qualifying education

with the provider in the two year period prior to taking the exam for the first time.

(3) The Commission will calculate the exam passage rate of an approved provider on a monthly basis, rounded to two decimal places on the final calculated figure, by:

(A) determining the number of students affiliated with that approved provider who passed the examination on their first attempt in the two-year period ending on the last day of the previous month; and

(B) dividing that number by the total number of students affiliated with that provider who took the exam for the first time during that same period.

(4) For purposes of approving a renewal application under subsection (j) of this section, the established exam passage rate benchmark for each license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(5) If at the time the Commission receives a renewal application from the provider requesting approval for another four year term, the provider's exam passage rate does not meet the established benchmark for a license category the provider will be:

(A) denied approval to continue offering courses for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is greater than 50% but less than 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in paragraph (5) of this subsection.

§535.63. *Qualifications for Instructors of Qualifying Courses.*

(a) A provider must ensure that an instructor who teaches real estate, easement or right-of-way, or real estate inspection qualifying courses is competent in the subject matter to be taught and has the ability to teach effectively.

(b) Except as provided by subsection (c) of this section, the provider must use an instructor who possesses the following qualifications:

(1) a college degree in the subject area to be taught and three years of experience in teaching or training;

(2) five years of active experience as a license holder (broker for Real Estate Brokerage and Broker Responsibility courses) and three years of experience in teaching or training; or

(3) the equivalent of subsection (b)(1) or (2) of this section as determined by the provider after consideration of the instructor's professional experience, research, authorship, or other significant endeavors in real estate, easement or right-of-way, or real estate inspection.

(c) For Texas Standards of Practice[;] or Inspector Legal and Ethics and Standards of Practice Review[; or Inspector Legal and

Ethics], the provider must use an instructor who has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

§535.64. *Content Requirements for Qualifying Real Estate Courses.*

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the PRINS 1-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference.[;]

{(A) Introduction to Modern Real Estate Practice - 200 minutes;}

{(B) Real Property - 60 minutes;}

{(C) Concepts and Responsibilities of Home Ownership - 95 minutes;}

{(D) Real Estate Brokerage and the Law of Agency - 180 minutes;}

{(E) Fair Housing Laws - 150 minutes;}

{(F) Ethics of Practice as a License Holder - 30 minutes;}

{(G) Texas Real Estate License Act - 180 minutes;}

{(H) Legal Descriptions - 100 minutes;}

{(I) Real Estate Contracts - 135 minutes;}

{(J) Interests in Real Estate - 180 minutes;}

{(K) How Home Ownership is Held - 70 minutes; and}

{(L) Listing Agreements - 120 minutes.}

(2) Principles of Real Estate II[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the PRINS 2-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference.[;]

{(A) Real Estate Math - 200 minutes;}

{(B) Real Estate Appraisal - 200 minutes;}

{(C) Real Estate Financing Principles - 210 minutes;}

{(D) Control of Land Use - 115 minutes;}

{(E) Specializations - 50 minutes;}

{(F) Real Estate Investments - 110 minutes;}

{(G) Leases - 95 minutes;}

{(H) Property Management - 120 minutes;}

{(I) Estates, Transfers, and Titles - 200 minutes; and}

{(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.}

(3) Law of Agency[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the LOA-0, Qualifying Real Estate Course Approval Form, Law of Agency, hereby adopted by reference.[;]

{(A) Agency Concepts - 130 minutes;}

to Client - 125 minutes;]

minutes;]

minutes;]

minutes;]

Intermediary Brokerage - 165 minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

Act - 140 minutes; and]

minutes;]

(4) Law of Contracts[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference.[;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

and]

minutes;]

(5) Promulgated Contract Forms[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference.[;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

205 minutes;]

minutes; and]

minutes;]

(6) Real Estate Finance[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference.[;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

(7) Real Estate Brokerage (mandatory for a broker's license) [which] shall contain the [following] topics and[; the] units [of which are] outlined in the REB-1 [REB-0], Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference.[;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

minutes;]

License Holder Productivity - 180 minutes;]

minutes;]

minutes;]

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below.[;]

(1) Residential Property Management[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the PROP-1 [PROP-0], Qualifying Real Estate Course Approval Form, Residential Property Management, hereby adopted by reference.[;]

minutes;]

minutes;]

minutes;]

minutes;]

- minutes;] (E) Owner Relations - 120 minutes;]
- (F) Market Analysis and Management of Housing - 95 minutes;]
- (G) Leases - 100 minutes;]
- (H) Tenant Relations - 115 minutes;]
- (I) Federal, State and Local Laws - 230 minutes;]
- (J) Maintenance and Construction - 90 minutes;]
- utes;] (K) Commercial Property Management - 150 minutes;]
- (L) Risk and Environmental Issues - 110 minutes; and]
- and Staff - 90 minutes;] (M) Safety and Security Issues for Property Managers

(2) Real Estate Marketing[, which] shall contain the [following] topics and[, the] units [of which are] outlined in the REM-0, Qualifying Real Estate Course Approval Form, Real Estate Marketing, hereby adopted by reference.[:]

- minutes;] (A) Real Estate Marketing - 80 minutes;]
- (B) The Marketing Concept - 80 minutes]
- utes;] (C) Marketing Research and Data Analysis - 150 minutes;]
- (D) Prospecting and Target Marketing - 80 minutes;]
- (E) Technology and Online Marketing - 100 minutes;]
- (F) Social Media Marketing - 120 minutes;]
- (G) Product and Pricing Strategies - 180 minutes;]
- (H) Compensation Models - 60 minutes;]
- minutes;] (I) Characteristics of a Successful Sales Agent - 150 minutes;]
- (J) Understanding Clients - 90 minutes;]
- (K) Negotiating and Selling Skills - 120 minutes;]
- (L) Steps to Executing Agreements - 50 minutes; and]
- (M) State and Federal Laws - 90 minutes;]
- utes;] (N) Ethics and Real Estate Professionalism - 150 minutes;]

(3) Real Estate Math[, which] shall contain the [following] topics and[, the] units [of which are] outlined in the REMath-0, Qualifying Real Estate Course Approval Form, Real Estate Math, hereby adopted by reference.[:]

- minutes;] (A) Introduction to Real Estate Math - 150 minutes;]
- (B) Review of Mathematical Logic Formulas - 150 minutes;]
- (C) List Price, Sales Price and Net Price - 50 minutes;]
- (D) Property Mathematics - 120 minutes;]
- (E) Appreciation & Depreciation - 60 minutes;]
- (F) Real Estate Taxes - 100 minutes;]
- utes;] (G) Mathematics of Real Estate Finance - 400 minutes;]
- (H) Appraisal Methods - 100 minutes;]
- (I) Closing Statements - 180 minutes;]

- (J) Investment Analysis - 90 minutes;]
- (K) Commercial Lease Calculations - 100 minutes;]

(4) Real Estate Appraisal[, which] shall contain the [following] topics[, which collectively will consist of 1500 minutes of coursework as] outlined in the REA-0, Qualifying Real Estate Course Approval Form, Real Estate Appraisal, hereby adopted by reference.[:]

- (A) Purpose and Function of an Appraisal;]
- (B) Role of The Appraisal Foundation/ASC/AQB;]
- (C) Social and Economic Determinants of Value;]
- (D) Appraisal Math and Statistics;]
- (E) Site Valuation;]
- (F) Cost Approach;]
- (G) Sales Comparison (Market Data) Approach;]
- (H) Income Capitalization Approach;]
- (I) Highest and Best Use;]
- (J) Final Correlations;]
- (K) Reporting;]
- (L) Opinion of Value vs. Broker Price Opinion;]
- (M) Appraisal Case Studies;]

(5) Real Estate Investment [, which] shall contain the [following] topics[, which collectively will consist of 1500 minutes of coursework as] outlined in the REI-0, Qualifying Real Estate Course Approval Form, Real Estate Investment, hereby adopted by reference.[:]

- ment;] (A) Purpose and Function of an Real Estate Investment;]
- (B) Real Estate Investment Characteristics;]
- (C) Residential, Land, and Commercial Investments;]
- (D) Ownership Interests in Real Property;]
- (E) Financing for Real Estate Investments;]
- (F) Managing the Investment Property;]
- (G) Techniques of Investment Analysis;]
- (H) The Time Value of Money;]
- ria;] (I) Discounted and Non discounted Investment Criteria;]
- (J) Leverage;]
- (K) Tax Characteristics and Strategies;]
- (L) Applications to Property Tax;]
- (M) The Transaction: Contract to Closing;]

(6) Real Estate Law[, which] shall contain the [following] topics[, which collectively will consist of 1500 minutes of coursework as] outlined in the REL-0, Qualifying Real Estate Course Approval Form, Real Estate Law, hereby adopted by reference.[:]

- (A) Legal concepts of Real Estate Law;]
- (B) Basic Contract Law;]
- (C) Promulgated Contracts;]
- (D) Land/Legal Descriptions;]

- [(E) Real Property Rights;]
- [(F) Restrictions and Land Use Control;]
- [(G) Estates in Land;]
- [(H) Conveyances - Voluntary & Involuntary;]
- [(I) Easements, Encumbrances & Liens;]
- [(J) Foreclosures;]
- [(K) Recording Procedures;]
- [(L) Evidence & Transfer of Title;]
- [(M) Landlord & Tenant Relationships;]

(7) Residential Inspection for Real Estate Agents[, which] shall contain the [following] topics[, which collectively will consist of 1500 minutes of coursework as] outlined in the RIREA-0, Qualifying Real Estate Course Approval Form, Residential Inspection for Real Estate Agents, hereby adopted by reference.[:]

- [(A) Purpose and Function of a Residential Inspection;]
- [(B) Standards of Practice: General Provisions and Departure;]
- [(C) Standard Inspection Report Form;]
- [(D) Inspector and Client Agreements;]
- [(E) Tools and Procedures;]
- [(F) Minimum Inspection Requirements for Structural, Electrical, HVAC, and Plumbing Systems;]
- [(G) Minimum Inspection Requirements for Appliances;]
- [(H) Optional Systems;]
- [(I) Repair-related Procedure and Forms;]
- [(J) Effect of Local Requirements; or]

(8) A 30 hour advanced course on any qualifying course subject matter or a combination of several different qualifying course subject matter topics as set out in subsections (a) and (b) of this section.

(c) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§535.65. *Responsibilities and Operations of Providers of Qualifying Courses.*

(a) Responsibility of Providers.

(1) A provider is responsible for:

- (A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;
- (B) maintaining student attendance records and pre-enrollment agreements;
- (C) verifying instructor qualification, performance and attendance;
- (D) proper examination administration;
- (E) validation of student identity acceptable to the Commission;
- (F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers, easement or right-of-way agents, or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Qualifications for Instructors of Qualifying Courses) to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter for qualifying real estate, easement or right-of-way, or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees, if applicable, associated with exam proctoring;

(G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(H) the notices regarding potential ineligibility for a license based on criminal history required by §53.152 [~~Section 53.152~~], Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student prior to commencement of the course.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section, and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by §53.153 [~~Section 53.153~~], Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery.[:]

(A) The location for the course must [be]:

(i) be conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) be adequate for the class size;

(iii) pose no threat to the health or safety of students;

and
(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) If the course is a qualifying or non-elective continuing education course delivered through the use of technology and there are more than 20 students registered for the course, the provider will also use:

(i) a monitor at the broadcast origination site to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor; and

(ii) a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination.

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified instructor is responsible for providing answers and rationale for the grading of the ~~written~~ course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(5) Notwithstanding subsections (g)(3) - (4) of this section, all units must be presented within the prescribed topic.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) of this subchapter throughout the approval period for a course in a manner acceptable to the Commission and examinations must:

(A) require an unweighted passing score of 70%; and

(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:

(i) is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and

(ii) has positively identified that the student taking the examination is the student registered for and who took the course.

(5) The following are examples of acceptable third party proctors:

(A) employees at official testing or learning/tutoring centers;

(B) librarians at a school, university, or public library;

(C) college or university administrators, faculty, or academic advisors;

(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a military installation or correctional facility.

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with ~~§535.62(b)(8)~~ [§535.62(b)(1)(G)] of this subchapter and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate ~~[that a student can submit to the Commission]~~. The course completion certificate shall include ~~[show]~~:

(A) the provider's name and approval number;

(B) the instructor's name;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) the printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form or ~~and~~ provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in ownership [~~Ownership~~] or operation [~~Operation~~] of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education Provider Supplement Application, including but not limited to changes in:

(A) operations or records management; and

(B) the location of the main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this subchapter (relating to Approval of Providers of Qualifying Courses), including a \$20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

§535.66. *Credit for Courses Offered by Accredited Colleges or Universities.*

(a) For the purposes of this section, an "accredited college or university" is defined as a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or by a recognized national or international accrediting body.

(b) Exemption. Pursuant to §1101.301, Texas Occupations Code [~~of Tex. Occ. Code~~], the Commission does not approve qualifying educational programs or courses of study in real estate and real estate inspection offered by an accredited college or university; however, the Commission has the authority to determine whether a real estate or real estate inspection course satisfies the requirements of the Act and Chapter 1102.

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics listed [~~set out~~] in §1101.003, Texas Occupations Code, or §535.64 of this subchapter (relating to Content Requirements for Qualifying Real Estate Courses) [~~of Tex. Occ. Code~~] in substantially the same manner [~~as clarified by the Commission in §535.64~~]; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5), Texas Occupations Code, [~~of Tex. Occ. Code~~] as clarified by the Commission in §535.213 of this chapter (relating to Qualifying Real Estate Inspector Instructors and Courses); and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.214 [~~§535.212~~] of this chapter (relating to Education and Experience Requirements for a License) [~~title, including instructor qualifications~~].

(e) Credit for easement or right-of-way courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.509, Occupations Code, in substantially the same manner as clarified by the Commission in §535.68 of this subchapter (relating to Content Requirements for Easement or Right-of-Way Qualifying Course); and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design, and delivery method.

(f) Preapproval of a course offered under subsections (c), (d), or (e).

(1) An accredited college and university may submit qualifying courses to the Commission for preapproval by filing a form approved by the Commission.

(2) Any course offered by an accredited college or [and] university without preapproval by the Commission will be evaluated by the Commission, using the standards set out in this section, to determine whether it qualifies for credit at such time as a student submits a transcript with the course to the Commission for credit.

(3) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been preapproved for credit.

(g) Required approval of qualifying courses not offered under subsections (c), (d), or (e) of this section or that are not subject to academic accreditation standards.

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university that is not offered under subsections (c), (d), or (e) of this section or that is not subject to academic accreditation standards is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter (relating to Approval of Qualifying Courses), including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(h) Complaints and audits.

(1) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission, alleging that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), (d), or (e) of this section, or is not complying with the requirements of this subchapter [Subchapter] for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), (d), or (e) of this section, the Commission may investigate the allegation and/or anonymously audit the course in question.

(2) If after an investigation and/or audit, the Commission determines that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), (d), or (e), or is not complying with the requirements of this subchapter [Subchapter] for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), (d), or (e) of this section, the Commission will no longer issue credit to applicants for that course.

(i) Required approval of CE program and courses. An accredited college or university is not exempt from approval for real estate

and real estate inspection CE programs and courses and must comply with all requirements for approval for providers, courses and instructors required by Subchapter G of this chapter.

§535.67. *Qualifying Education: Compliance and Enforcement.*

(a) Audits.

(1) The Commission staff may:

(A) conduct on-site audits without prior notice to an approved provider; and

(B) enroll and attend a course without identifying themselves as employees of the Commission for purposes of auditing a course.

(2) An audit report indicating noncompliance with the Act or Commission rules may be [Rules is] treated as a written complaint against the approved provider concerned.

(b) Complaints, investigations, and hearings.

(1) The Commission shall investigate complaints against approved providers which allege acts constituting violations of the Act, Chapter 1102, [Texas Occupations Code] and Commission rules.

(2) Complaints must be in writing, and the Commission may not initiate an investigation, or take action against an approved provider [or instructor,] based on an anonymous complaint.

(3) Commission staff may initiate a complaint for any violation of the Act, Chapter 1102, [Texas Occupations Code] and Commission rules, including a complaint against an approved provider, if a course completion certificate or other document filed with the Commission provides reasonable cause to believe a violation of this subchapter has occurred.

(4) The Commission shall provide the approved provider named in the complaint a copy of the complaint.

(5) Proceedings against approved providers will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Chapter 2001, Texas Government Code, [Chapter 2001,] and Chapter 533 of this title (relating to Practice and Procedure). [Venue for any hearing conducted under this section will be in Travis County.]

(c) Cooperation with audit or complaint investigation. An approved provider shall provide records in the provider's [his or her] possession for examination by the Commission or provide such information as is requested by the Commission not later than the 14th [15th] day after the date of receiving a request for examination of records or information.

(d) Grounds for disciplinary action against an approved provider.

(1) The following acts committed by an approved provider or qualified instructor acting on behalf of the provider, are grounds for disciplinary action by the Commission against the provider:

(A) procuring or attempting to procure approval for a provider or course by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the Commission;

(B) making a false representation to the Commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(C) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(D) failing to provide, not later than the 14th [~~15th~~] day after the date of a request, information requested by the Commission [~~commission~~] as a result of a complaint which would indicate a violation of these sections;

(E) making a materially false statement to the Commission in response to a request from the Commission for information relating to a complaint against the approved provider;

(F) disregarding or violating a provision of [~~this Chapter or~~] the Act or Commission rules; or

(G) a provider of qualifying education failing to maintain sufficient financial resources to continue operation of the provider.

(2) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission alleging that a provider or instructor is not adequately teaching to the curriculum standards as required by this chapter [~~Chapter~~], the Commission may initiate a complaint against that provider.

(3) If after an investigation the Commission determines that a provider or instructor engaged in any of the acts listed in this subsection, or failed to teach to the curriculum standards as required by this chapter [~~Chapter~~], the Commission may take the following disciplinary action against a provider:

- (A) reprimand;
- (B) impose an administrative penalty;
- (C) require additional education; or
- (D) suspend or revoke approval.

(e) Probation. The Commission may probate an order of suspension or revocation issued under this section upon reasonable terms and conditions.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300744

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3284



SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.71, 535.72, 535.74, 535.75

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.71. *Approval of CE Providers.*

(a) Application for approval.

(1) A person desiring to be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspection continuing education courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 of this chapter (relating to Fees) or §535.210 of this chapter (relating to Fees) [~~title~~]; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission sends the request.

(3) A CE provider is permitted to offer continuing education courses in real estate, easement or right-of-way, and real estate inspector that have been approved by the Commission.

(b) Standards for approval. To be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspector continuing education courses, the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness, and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(c) Approval notice. An applicant shall not act as or represent itself to be an approved CE provider until the applicant has received written notice of the approval from the Commission.

(d) Period of initial approval. The initial approval of a CE provider is valid for two years.

(e) Denial [~~Disapproval~~].

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of denial [~~disapproval~~] to the applicant.

(2) The denial [~~disapproval~~] notice, applicant's request for a hearing on the denial [~~disapproval~~], and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Texas Government Code, [~~Chapter 2001~~], and Chapter 533 of this title (relating to Practice and Procedure). [~~Venue for any hearing conducted under this section shall be in Travis County.~~]

(f) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(3) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

§535.72. *Approval of Non-elective Continuing Education Courses.*

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter (relating to Approval of Elective Continuing Education Courses).

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

(i) submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.101 of this chapter [title] (relating to Fees); and

(B) for a non-elective real estate inspection course:

(i) submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.210 of this chapter [title] (relating to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) an eight-hour [a four-hour] Inspector Legal and Ethics and Standards of Practice Review course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics and Standards of Practice Review course expires on August 31 of each odd-numbered year.

(e) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this chapter [title] (relating to Responsibilities and Operations of Providers of Qualifying Courses). The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers). Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of methods to engage students in interactive discussions and activities to meet the course objectives and time requirements are required for approval.

(g) Course examinations. A provider must administer a final examination promulgated by the Commission for non-elective CE courses.

(1) Real estate non-elective CE courses. The examination will be included in course instruction time. Each student will complete the examination independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(2) Inspector non-elective CE courses for classroom delivery.

(A) The examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor.

(B) A student is not required to receive a passing grade on the examination to receive course credit.

(3) Inspector non-elective CE courses for distance education delivery.

(A) An examination is required after completion of regular course work.

(B) The examination must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this chapter [title], who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who registered for and took the course; and

(iii) kept confidential.

(C) A provider may permit a student to take one subsequent final examination if the student fails the initial final examination. The subsequent final examination must be:

- (i) different from the initial final examination; and
- (ii) completed no later than the 30th day after the date the original course concludes.

(D) Credit will not be awarded to a student for a course where the student receives a pass rate on a final examination or subsequent final exam below 70%.

(E) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(h) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the [author or] provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 of this chapter [(relating to Fees)] or §535.210 of this chapter [title (relating to Fees)].

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission rules [Rules] and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those changes [statutes or rules].

§535.74. *Qualifications for Continuing Education Instructors.*

(a) A provider must ensure that an instructor who teaches continuing education courses is competent in the subject matter to be taught and has the ability to teach effectively.

(b) The provider must use an instructor who possesses the following additional qualifications to teach real estate non-elective CE courses:

(1) meet the criteria to teach qualifying courses under §535.63 of this chapter (relating to Qualifications for Instructors of Qualifying Courses);

(2) successfully complete an instructor training program authorized by the Commission for the version of the non-elective CE course to be taught; and

(3) receive a passing grade of at least 80% on the non-elective CE course final examination promulgated by the Commission.

(c) For Inspector Legal and Ethics and Standards of Practice Review, [or Inspector Legal and Ethics,] the provider must use an in-

structor who has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

(d) An inspector is qualified to instruct a Ride-Along Course as defined in §535.218 of this chapter (relating to Continuing Education Required for Renewal) [title] if the inspector has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

§535.75. *Responsibilities and Operations of Continuing Education Providers.*

(a) Except as provided by this section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this chapter [title] (relating to Responsibilities and Operations of Providers of Qualifying Courses).

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this subchapter [title] (relating to Qualifications for Continuing Education Instructors); and

(B) has expertise in the subject area of instruction and ability as an instructor;

(2) A CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(3) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this subchapter [title] for real estate, easement or right-of-way, or inspector elective CE courses provided that:

(A) the guest instructor instructs for no more than a total of 50% of the course; and

(B) a CE instructor qualified under §535.74 of this subchapter [title] remains in the classroom during the guest instructor's presentation.

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this subchapter [title] for 100% of a real estate, easement or right-of-way, or inspector elective CE courses provided that:

(A) The CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter (relating to Approval of Continuing Education Providers); or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a CE instructor qualified under §535.74 of this subchapter [title] who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations.

(1) For real estate CE courses, examinations are only required for non-elective CE courses and must comply with the requirements in §535.72(g) of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(2) For inspector CE courses, examinations are only required for CE courses offered through distance education delivery and must comply with the requirements in §535.72(g) of this subchapter [~~relating to Approval of Non-elective Continuing Education Courses~~] and have a minimum of four questions per course credit hour.

(d) Course completion roster. [~~Instead of providing a course completion certificate,~~] Upon [upon] completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom delivery.[:]

(A) A provider shall maintain a course completion roster and submit information contained in the roster by electronic means acceptable to the Commission not sooner than the number of course credit hours has passed and not later than the 10th calendar day after the date a course is completed.

(B) A course completion roster shall include:

- (i) the provider's name and license;
- (ii) a list of all instructors whose services were used in the course;
- (iii) the course title;
- (iv) the course numbers;
- (v) the number of classroom credit hours;
- (vi) the course delivery method;
- (vii) the dates the student started and completed the course; and

(viii) the signature of an authorized representative of the provider for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept unsigned course completion rosters.

(2) Distance education [Education] delivery [method]. A provider shall maintain a Distance Education Reporting form and submit information contained in that form by electronic means acceptable to the Commission, for each student completing the course not sooner than the number of course credit hours has passed after the student starts the course and not later than the 10th calendar day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion

of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in ownership [Ownership] or operation [Operation] of an approved CE Provider. Changes in ownership or operation of an approved CE provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

- (A) ownership;
- (B) management; and
- (C) the location of the main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a CE Provider Application including all required information and the required fee.

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

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SUBCHAPTER H. RECOVERY FUND

22 TAC §535.82

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.82. *Proration of Payments from the Real Estate Recovery Trust Account.*

In the event of multiple valid pending claims against a license holder in excess of the limitations in §1101.610 of the Act, the claims shall be prorated as follows:

(1) Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that

may be paid from the Real Estate Recovery Trust Account, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1101.610 of the Act are not reached, interest on actual damages (pre-judgment and post-judgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Real Estate Recovery Trust Account, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1101.610 of the Act are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Real Estate Recovery Trust Account, the other interest, attorney fees, and court costs shall be prorated.

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SUBCHAPTER L. INACTIVE LICENSE STATUS

22 TAC §§535.120 - 535.122

The new rule and amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rule and amendments.

§535.120. Prohibited Activity While on Inactive License Status.

A license holder may not engage in real estate brokerage activity while on inactive status.

§535.121. Inactive Sales Agent [Salesperson] License.

(a) The license of a sales agent [salesperson] immediately becomes inactive upon [each of the following circumstances]:

- (1) the death of the sales agent's [salesperson's] sponsoring broker;
- (2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;

(3) if the sponsoring broker is a business entity, the dissolution of the entity or the forfeiture of its charter;

(4) if the sponsoring broker is a business entity, the expiration, suspension, revocation, or inactivation of the license of the designated broker of the entity, or the death of the designated broker;

(5) termination of sponsorship by the sales agent [salesperson] or sponsoring broker;

(6) failure to timely complete continuing education required under the Act and this chapter [Chapter]; or

(7) receipt by the Commission of an application for inactive status.

(b) If the broker intends to terminate the sponsorship, the broker must immediately:

(1) notify the sales agent [salesperson] in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(c) If the sales agent [salesperson] intends to terminate the sponsorship, the sales agent [salesperson] must immediately:

(1) notify the broker in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(d) If a sponsorship is terminated on a form under this section, the effective date of the termination of the sponsorship is the date the Commission receives the completed form and any applicable fee.

(e) It is the responsibility of the sales agent [salesperson] on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

§535.122. Reactivation of Sales Agent [Salesperson] License.

In order to reactivate a license on inactive status, the license holder must:

(1) provide the Commission with documentation that the license holder has satisfied all continuing education requirements under the Act and this chapter;

(2) certify, on a form acceptable to the Commission, that the license holder has not engaged in activity requiring a license at any time after the license became inactive;

(3) establish a sponsorship relationship with a broker:

(A) through the online process approved by the Commission; or

(B) following receipt by the Commission of the applicable sales agent [salesperson] sponsorship form signed by the sales agent [salesperson] and the sponsoring broker; and

(4) pay the appropriate fee.

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SUBCHAPTER M. NONRESIDENTS

22 TAC §535.133

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.133. *Consent To Be Sued; Exception to Requirements.*

A broker or sales agent [salesperson] who resides in or moves to a state other than Texas must file a consent to service of legal process with the Commission. A consent to service is not required when the broker's [broker] or sales agent's [salesperson's] place of business is in Texas.

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §§535.141, 535.147, 535.148

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.141. *Initiation of Investigation; Order Requirements.*

(a) A complaint which names a licensed real estate sales agent as the subject of the complaint but does not specifically name the sales

agent's sponsoring broker, is a complaint against the broker sponsoring the sales agent at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled the broker's [his or her] professional responsibilities provided the complaint concerns the conduct of the sales agent as an agent for the broker.

(b) The designated broker is responsible for all real estate brokerage activities performed by, on behalf of, or through a business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker is a complaint against the designated broker at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled the designated broker's [his or her] professional responsibilities. A complaint which names a sales agent sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the sales agent for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled the designated broker's [his or her] professional responsibilities provided the complaint concerns the conduct of the sales agent as an agent of the business entity.

(c) Using the criteria specified by §1101.204 [Section 1101.204] of the Act, the Commission prioritizes and investigates complaints received by the Commission as follows:

(1) Level 1.

(A) Fraud or misrepresentation that involves loss of \$10,000 or more [~~>~~\$10K].

(B) Continuing threat to public welfare [Personal safety issues].

(C) Unlicensed activity.

~~(D) Mortgage Fraud.~~

(2) Level 2.

(A) Fraud or misrepresentation that involves loss of less than [money or property <] \$10,000.

(B) Negligence.

~~(C) Allegations involving education providers.]~~

~~(D) [Violations of Chapter 1102; Texas Occupations Code]:~~

(i) 1102.301 negligence or incompetence by an inspector.

(ii) 1102.302 employment contingent on inspection report.

(iii) 1102.303 acting in conflicting capacities, i.e. inspector, broker, principal.

(iv) 1102.305 agreeing to perform repairs in connection with inspection.

~~(D) [Violations of Standards of Practice, §§535.227 - 535.233 [§§535.227-535.234] of this chapter.~~

(3) Level 3.

(A) Technical violations.

(B) Chapter 1102 complaints other than those listed in Level 2 above.

(C) Allegations involving education providers.

(d) If information obtained during the course of an investigation of a complaint reveals reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or rules, no additional authorization shall be required to investigate and take action based upon the information.

(e) If the Commission suspends or revokes a license or probates an order of suspension or revocation against a license holder, the Commission may monitor compliance with its order and initiate action based on the authority of the original complaint or original authorization by the members of the Commission.

(f) A person whose license has been suspended may not during the period of any suspension perform, attempt to perform, or advertise to perform any act for which a license is required by the Act or Commission rules [Rules].

(g) A person whose license is subject to an order suspending the license must provide notice in writing not later than the third day before the date of the suspension as follows:

(1) if the person is a sales agent, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a broker, notify any sponsored sales agent [he or she sponsors], or any business entity for which the person is designated broker that:

(A) his or her broker license will be suspended; and

(B) once the suspension is effective, any sponsored sales agent [he or she sponsors], or who is sponsored by the business entity, will no longer be authorized to engage in real estate brokerage unless:

(i) the sales agent is sponsored by another broker and files a change of sponsorship with the Commission; or

(ii) the business entity designates a new broker and files a change of designated broker with the Commission;

(3) If the person is an apprentice inspector or real estate inspector, notify his or her sponsoring professional inspector that his or her license will be suspended;

(4) if the person is a professional inspector notify any sponsored apprentice or real estate inspectors [he or she sponsors] that:

(A) his or her professional inspector license will be suspended; and

(B) once the suspension is effective any sponsored apprentice or real estate inspectors [he or she sponsors] will no longer be authorized to inspect any real property unless the apprentice or real estate inspectors associate with another professional inspector and file a change of sponsorship with the Commission.

(5) if the person has a contractual obligation to perform services for which a license is required by law or Commission rule, notify all other parties to the contract that the services cannot be performed during the suspension;

(6) if the person is a sales agent and is directly involved in any real estate transaction in which the sales agent acts as an agent, notify all other parties, including principals and other brokers, that the person cannot continue performing real estate brokerage services during the suspension; and

(7) if the person holds money in trust in any transaction in which the person is acting as a broker, remit such money in accordance with the instructions of the principals.

(h) If, in conjunction with an application or disciplinary matter, an applicant or license holder agrees to automatic suspension or revocation of his or her license for failing to comply with an administrative term or requirement of an agreed order such as payment of a penalty or completion of coursework, the license may be automatically suspended or revoked with no further action by the Commission.

~~[(i) A broker may not assign to another broker a listing agreement, buyer's representation agreement or other personal service agreement to which the broker is a party and which obligates the broker to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.]~~

§535.147. Splitting Fee with Unlicensed Person.

(a) Except as otherwise provided by the Act or Commission rules [Rules], a broker or sales agent [salesperson] may not share a commission or fees with any person who engages in acts for which a license is required and is not actively licensed as a broker or sales agent [salesperson].

(b) An unlicensed person may share in the income earned by a business entity licensed as a broker or exempted from the licensing requirements under the Act if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.

(c) A broker or sales agent [salesperson] may not share a commission or fees with an unlicensed business entity created by a license holder for the purpose of collecting a commission or fees on behalf of the license holder.

(d) A license holder may rebate or pay a portion of the license holder's fee or commission to a party in the transaction when the sales agent [salesperson] has the written consent of the sales agent's [salesperson's] sponsoring broker and the party represented by the license holder. A commission or fee may not be paid to any party to the transaction in a manner that misleads a broker, lender, title company, or governmental agency regarding the real estate transaction or the financial resources or obligations of the buyer. A license holder who intends to pay a portion of the license holder's fee or commission to a party the license holder does not represent must obtain the written consent of the party represented by the license holder before making the payment.

§535.148. Receiving an Undisclosed Commission or Rebate.

(a) A license holder may not receive a commission, rebate, or fee in a transaction from a person other than the person the license holder represents without first disclosing to the license holder's client that the license holder intends to receive the commission, rebate, or fee, and obtaining the consent of the license holder's client.

(b) If a party the license holder does not represent agrees to pay a service provider in the transaction, the license holder must also obtain the consent of that party to accept a fee, commission, or rebate from the service provider. As used in this section, the term "service provider" does not include a person acting in the capacity of a real estate broker or sales agent.

(c) A license holder may not enter into a contract or agreement with a service provider to a real estate transaction in which the license holder represents one or both of the parties if, pursuant to the contract or agreement:

(1) the license holder provides services for or on behalf of the service provider; and

(2) the contract or agreement prohibits the license holder from offering similar services for or on behalf of a competing service provider.

(d) A license holder may not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(1) the referral of inspections, lenders, mortgage brokers, or title companies;

(2) inclusion on a list of inspectors, preferred settlement providers, or similar arrangements; or

(3) inclusion on lists of inspectors or other settlement providers contingent on other financial agreements.

(e) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

(1) a federally related mortgage loan originator;

(2) a mortgage broker;

(3) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;

(4) a title service provider;

(5) an attorney;

(6) a person who prepares documents, including notarization, delivery, and recordation;

(7) a person who provides credit report services;

(8) an appraiser;

(9) an inspector;

(10) a settlement agent;

(11) a person who provides mortgage insurance services;

(12) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties or residential service contracts;

(13) a real estate agent or broker; and

(14) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(f) A license holder must use TREC No. RSC-4 [RSC-3], Disclosure of Relationship with Residential Service Contract Provider or Administrator [Company], to disclose to a party to a real estate transaction in which the license holder represents one or both of the parties any payments received for services provided for or on behalf of a residential service contract provider or administrator [company] licensed under Texas Occupations Code Chapter 1304.

(g) The Texas Real Estate Commission adopts by reference TREC No. RSC-4 [RSC-3], Disclosure of Relationship with Residential Service Contract Provider or Administrator [Company], approved by the Commission for use by license holders to disclose payments received from a residential service contract provider or administrator [company]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(h) This section does not prohibit:

(1) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred;

(2) a payment at market rates to any person for goods actually furnished or for services actually performed; or

(3) a payment pursuant to a cooperative brokerage or referral arrangement or agreement between active licensed real estate agents and real estate brokers.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.208 - 535.210, 535.213, 535.214, 535.218 - 535.220, 535.224

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.208. *Application for a License.*

(a) Application.

(1) A person who intends to be licensed by the Commission must: ~~file an application for the license:~~

(A) file an application for the license through the online process approved by the Commission[;] or

~~(B)~~ on a form approved by the Commission for that purpose; and

~~(B)~~ [(C)] submit the required fee under §535.210 of this chapter [title] (relating to Fees).

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for any inspector license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, and [or] the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act; and

(D) provide proof of financial responsibility as required by Chapter 1102.

(2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) License for military service members, veterans, or military spouses. Unless otherwise excepted under §535.58 of this chapter [title] (relating to License for Military Service Members, Veterans, or Military Spouses), an applicant who is a military service member, veteran, or the spouse of a person who is on full-time military service in the armed forces of the United States or serving on active duty as a member of the armed forces of the United States must meet all requirements of this section.

(d) Terminated application. An application will be terminated and subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(e) Denial of application.

(1) An application for a license may be denied if the Commission determines that the applicant has failed to satisfy the Commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in §1101.364, Texas Occupations Code, [§1101.364,] and §535.34 of this chapter [title] (relating to Sales Agents [Salesperson] Employed by an Owner of Land and Structures Erected by the Owner).

(2) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the Commission in an application for a license for an apprentice or a real estate inspector.

§535.209. Examinations.

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination. Examination results are valid for a period of one year from the date the examination is passed.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this chapter [title] (relating to Examinations). An applicant is eligible to take a qualifying examination for a license after the Commission has received evidence of completion of all education and experience required by this subchapter.

~~[(e) Waiver of national portion of examination requirement. The Commission may waive the national portion of the examination of an applicant for a real estate or professional inspector license if the applicant:]~~

~~[(1) currently holds an active real estate inspector license in another state or actively practices as a home inspector in compliance with the laws of another state; and]~~

~~[(2) has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.]~~

~~[(d) If the applicant has not satisfied all requirements within one year from the time the accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.]~~

~~[(e) An examination is considered passed when an applicant has received a passing grade on both parts of the examination.]~~

~~[(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:]~~

~~[(1) for an applicant who failed the national part of the examination, 32 hours;]~~

~~[(2) for an applicant who failed the state part of the examination, 8 hours; and]~~

~~[(3) for an applicant who failed both parts of the examination, 40 hours.]~~

~~[(g) Subsections (e) through (f) of this section expire on February 28, 2021.]~~

(c) ~~[(h)]~~ Exam Eligibility. [Effective March 1, 2021. The following eligibility requirements apply to applicant who takes the examination for licensure on or after March 1, 2021:]

(1) Before the applicant is eligible to take the national portion of the examination, the applicant must submit evidence of completion of the following courses to the Commission:

(A) Property and Building Inspection Module I;

(B) Property and Building Inspection Module II;

(C) Business Operations and Professional Responsibilities Module; and

(D) Analysis of Findings and Reporting Module, if required for licensure under §535.214 of this subchapter [title] (relating to Education and Experience Requirements for Licensure).

(2) Before the applicant is eligible to take the state portion of the examination, the applicant must submit evidence of completion of the following coursework to the Commission, if required for licensure under §535.214 of this subchapter [title]:

(A) Texas Law Module;

(B) Texas Standards of Practice Module; and

(C) Texas Practicum.

(3) If the applicant has previously passed the national portion of the examination, before the applicant is eligible to take the state portion of the examination, the applicant:

(A) must submit evidence of completion of the required coursework as provided under ~~this~~ subsection (c)(2) [(h)(2)] of this section; and

(B) is not required to complete coursework outlined under subsection (c)(1) [(h)(1)] of this section.

(4) If the applicant fails the examination three consecutive times, the applicant may not apply for reexamination or submit a new license application unless the applicant submits evidence to the Commission that the applicant has successfully completed additional qualifying education after the date of the third failed examination, as follows:

(A) for an applicant who failed the national part of the examination, Property and Building Inspection Module I or Property and Building Inspection Module II; or

(B) for an applicant who failed the state part of the examination, Texas Law Module, or Texas Standards of Practice Module.

(5) If ~~if~~ the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

§535.210. Fees.

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

(1) a fee of \$60 for filing an original or reinstatement application for a license as an apprentice inspector;

(2) a fee of \$100 for filing an original or reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of \$120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of \$30 for the timely renewal of the license of an apprentice inspector;

(5) a fee of \$50 for the timely renewal of the license of a real estate inspector;

(6) a fee of \$60 for the timely renewal of the license of a professional inspector;

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

(8) a fee equal to two [2] times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(9) a fee for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;

(10) a fee for taking a license examination without a national portion or retaking the state part of the license examination;

(11) a fee of \$50 to request an inactive professional inspector license be returned to active status;

(12) a fee of \$50 for the filing of a fitness determination;

(13) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(14) a fee of \$400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;

(15) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying inspector education program;

(16) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years:

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review.

(17) a fee of \$400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(18) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:

(A) \$2.50 for content and examination review;

(B) \$2.50 for classroom delivery design and presentation review; and

(C) \$5 for distance education delivery design and presentation review.

(19) the fee required under paragraphs (16)(C) and (18)(C) of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission.

(20) a fee of \$10 for deposit in the Real Estate Inspection Recovery Fund [~~real estate inspection recovery fund~~] upon an applicant's successful completion of an examination; and

(21) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last known mailing address of the license holder or applicant as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under §1101.652(a)(3), Texas Occupations Code[; §1101.652(a)(3)], against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

§535.213. *Qualifying Real Estate Inspector Instructors and Courses.*

{(a) Subsections (a) - (f) of this section shall expire on February 28, 2021, and only apply to satisfy the education requirements for a license under §535.212 of this title (relating to Education and Experience Requirements for a License).}

{(b) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this title (relating to Approval of Qualifying Courses).}

{(c) A classroom course may include up to 50% of total course time for appropriate field trips relevant to the course topic. Field trips may not be included as part of distance education delivery courses.}

{(d) A course approved to satisfy a specific subject matter requirement under §535.212 of this title must address each part of the subject as described by this section.}

{(e) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses are those courses prescribed by §1102.001(5), Texas Occupations Code and the following:}

{(1) Foundations, which shall include the following topics:}

- {(A) site analysis/location;}
- {(B) grading;}
- {(C) foundations;}
- {(D) flat work;}
- {(E) material;}
- {(F) foundation walls;}
- {(G) foundation drainage;}
- {(H) foundation waterproofing and damp proofing;}
- {(I) columns; and}
- {(J) under floor space.}

{(2) Framing, which shall include the following topics:}

- {(A) flashing;}
- {(B) wood frame - stick/balloon;}
- {(C) roof structure - rafters/trusses;}
- {(D) floor structure;}
- {(E) porches/decks/steps/landings/balconies;}
- {(F) doors;}
- {(G) ceilings;}
- {(H) interior walls;}
- {(I) stairways;}
- {(J) guardrails/handrails/balusters;}
- {(K) fireplace/chimney;}
- {(L) sills/columns/beams/joist/sub-flooring;}
- {(M) wall systems/structure - headers;}
- {(N) rammed earth;}

- {(O) straw bale;}
- {(P) ICF;}
- {(Q) panelized;}
- {(R) masonry;}
- {(S) wood I joist;}
- {(T) roof sheathing;}
- {(U) wood wall;}
- {(V) steel wall;}
- {(W) wood structural panel; and}
- {(X) conventional concrete.}

{(3) Building Enclosure, which shall include the following topics:}

- {(A) review of foundation and roofing relation;}
- {(B) review of flashing;}
- {(C) cladding;}
- {(D) windows/glazing;}
- {(E) weather barriers;}
- {(F) vapor barriers;}
- {(G) insulation;}
- {(H) energy codes; and}
- {(I) ingress/egress.}

{(4) Roof Systems, which shall include the following topics:}

- {(A) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing;}
- {(B) roof water control;}
- {(C) skylights;}
- {(D) flashing;}
- {(E) ventilation/non-ventilation;}
- {(F) attic access;}
- {(G) re-roofing;}
- {(H) slopes - step roof/low slope/near flat;}
- {(I) materials - asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and}
- {(J) valleys.}

{(5) Plumbing Systems, which shall include the following topics:}

- {(A) water supply systems;}
- {(B) fixtures;}
- {(C) drains;}
- {(D) vents;}
- {(E) water heaters (gas and electric);}
- {(F) gas lines; and}

{(B) Exterior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(C) Roof components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(D) Structural components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(E) Interior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(F) Permanently installed kitchen appliances; assessing for proper condition and operations - 300 minutes; and}

{(G) Fireplaces, fuel-burning appliances, and their chimney and vent systems; assessing defects and issues that may affect people or the performance of the building - 200 minutes;}

(2) Property and Building Inspection Module II (40 hours)[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the PBIM 2-0, Property and Building Inspection II Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.[;]

{(A) Electrical systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(B) Cooling Systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(C) Heating systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(D) Insulation; moisture management systems; and ventilation systems in conditioned and unconditioned spaces; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(E) Plumbing systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;}

{(F) Mechanical exhaust systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes; and}

{(G) Optional systems Systems - 200 minutes;}

(3) Analysis of Findings and Reporting Module (20 hours)[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the AFRM-0, Analysis of Findings and Reporting Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.[;]

{(A) Informing the client what was inspected and describing building systems and components by their distinguishing characteristics - 200 minutes;}

{(B) Describing inspection methods and limitations in the inspection report to inform the client what was not inspected and why - 200 minutes;}

{(C) Describing systems and components inspected that are not functioning properly or are defective - 200 minutes;}

{(D) Describing systems and components in need of further evaluation or action - 200 minutes; and}

{(E) Describing the implication of defects so that the client understands what could occur if the defects are not corrected - 200 minutes;}

(4) Business Operations and Professional Responsibilities Module (10 hours)[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the BOPRM-0, Business Operations and Professional Responsibilities Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.[;]

{(A) Elements of the written inspection contract and the rights and responsibilities of the inspector and the client - 250 minutes; and}

{(B) Inspector's responsibility to maintain the quality, integrity, and objectivity of the inspection process - 250 minutes;}

(5) Texas Law Module (20 hours)[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the TLM-1, Texas Law Module, Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.[;]

{(A) Licensing Law; Chapter 1102 Texas Occupations Code - 200 minutes;}

{(B) General Provisions; TREC Rules, Chapter 535 Subchapter R - 400 minutes; and}

{(C) Inspector Legal & Ethics - 400 minutes;}

(6) Texas Standards of Practice Module (24 hours)[; which] shall contain the [following] topics and[; the] units [of which are] outlined in the TSOPM-0, Texas Standards of Practice Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.[;]

{(A) Structural systems; Texas SOP exclusions and unique reporting requirements - 400 minutes;}

{(B) Electrical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes; and}

{(C) Mechanical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes;}

(7) Texas Practicum (40 hours)[;] which shall consist of a minimum of five complete and in-person inspections.

(A) The Texas Practicum must:

(i) be supervised by a currently licensed inspector who has:

(I) been actively licensed as a professional inspector [~~Professional Inspector~~] for at least five years; and

(II) at least three years of supervisory or training experience with inspectors; or

(III) performed a minimum of 200 real estate inspections as a Texas professional inspector; and

(ii) consist of no more than four students per inspector supervising the Texas Practicum.

(B) The inspector supervising the Texas Practicum must evaluate that upon completion by the student, each report is:

(i) considered satisfactory for release to an average consumer; and

(ii) demonstrates an understanding of:

(I) report writing;

(II) client interaction;

(III) personal property protection; and

(IV) concepts critical for the positive outcome of the inspection process.

(C) An applicant may request credit for completing the Texas Practicum (40 hours) by submitting the credit request form approved by the Commission.

(D) Audits.

(i) The Commission staff may conduct an audit of any information provided on a Texas Practicum credit request form, including verifying that the inspector supervising the Texas Practicum meets the qualifications required to supervise the practicum.

(ii) The following acts committed by a supervisory inspector conducting the Texas Practicum are grounds for disciplinary action:

(I) making material misrepresentation of fact;

(II) making a false representation to the Commission, either intentionally or negligently, that a student completed the Texas Practicum in its entirety, satisfying all requirements for credit to be awarded.

§535.214. *Education and Experience Requirements for a License.*

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours; and

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter [title] (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter [title].

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors:

(1) the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold; and

(2) an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to subsection (a) of this section [§535.214(a) of this title], to become a licensed real estate inspector, a person must:

(1) complete a total of 154 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Standards of Practice Module, total 24 hours; and

(E) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this subchapter; and [title].

(3) be sponsored by a professional inspector.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to subsection (b) of this section [§535.214(b) of this title], to become a licensed professional inspector, a person must:

(1) complete a total of 194 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Module, total 24 hours; and

(G) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this subchapter [title].

(f) Courses completed for a real estate inspector license under this section shall count towards the identical qualifying inspection coursework for licensure as a professional [~~profession~~] inspector.

(g) Experience Credit. The Commission may award credit for education required under [~~subsection~~] subsections (d) and (e) of this section to an applicant who:

(1) has three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(2) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

~~[(h) This rule is effective March 1, 2021.]~~

§535.218. *Continuing Education Required for Renewal.*

(a) Continuing education required for renewal.

(1) Before renewal of an inspector license, a license holder must take [~~the~~] 32 hours of continuing education which shall include the following:

(A) 24 hours in the following subjects:

- (i) Foundations;
- (ii) Framing;
- (iii) Building Enclosures;
- (iv) Roof Systems;
- (v) Plumbing Systems;
- (vi) Electrical Systems;
- (vii) HVAC Systems;
- (viii) Appliances;
- (ix) Texas Standard Report Form Writing;
- (x) Other approved courses related real estate inspections; and

(B) eight hours of non-elective coursework in legal, ethics, SOPs, and report writing [~~consisting of the following coursework:~~]

~~[(i) 4 hours of Standards of Practice Review; and]~~

~~[(ii) 4 hours of Legal and Ethics].~~

(2) An inspector who files an application for reinstatement of an expired license within two years of the expiration date of the previous license must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(3) An inspector is not eligible to receive more than 16 hours continuing education credit for any one single subject described in subsection (a)(1) of this section.

(b) Receiving continuing education credit for ride-along inspection course.

(1) Up to eight hours of continuing education credit per two year license period may be given to a license holder for completion of a ride-along inspection course.

(2) At a minimum, a ride-along inspection course must:

(A) consist of one full residential property inspection; and

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this subchapter [~~title~~].

(3) In order to qualify for real estate inspector continuing education credit, a ride-along inspection course shall consist of no more than two students per session.

(4) The instructor of a ride-along inspection course may:

(A) review report writing; and

(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

~~[(e) Mandatory Standards of Practice Review course.]~~

~~[(1) To be approved by the Commission, the Standards of Practice Review course shall contain the topics and the units outlined in the SOP-1, CE Course Approval Form, Standards of Practice Review, hereby adopted by reference.]~~

~~[(2) Each Standards of Practice Review course expires on August 31 of each odd-numbered year.]~~

~~(c) [(d)] Continuing education credit for students.~~

~~[(1) Courses submitted for inspector continuing education credit must be successfully completed during the term of the current license holder.]~~

~~(1) [(2)] The Commission may not grant continuing education credit twice for a course with the same course content taken by a license holder [licensee] within a two year period.~~

~~(2) [(3)] Unless a real estate inspection continuing education course is offered by alternative delivery methods, completion of a final examination is not required for a license holder to receive continuing education credit for a course.~~

~~(3) [(4)] The Commission [commission] will not grant partial credit to an inspector who attends a portion of a course.~~

~~(d) [(e)] Continuing education credit for course taken outside of Texas. An inspector may receive continuing education elective credit for a course taken to satisfy the continuing education requirements of a country, territory, or state other than Texas if:~~

(1) the inspector licensed in Texas held an active inspector license in a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for an inspector license by a country, territory, or state other than Texas at the time the course was taken;

(3) the successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof satisfactory to the Commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit for an inspector licensed in Texas; and

(5) the inspector licensed in Texas has filed a Continuing Education (CE) Credit Request for an Out of State Course, with the Commission.

~~(e) [(f)] Continuing education credit for instructors.~~

(1) Providers may request continuing education credit be given to instructors of real estate inspection courses subject to the following guidelines:

(A) instructors may receive credit for only those portions of the course which they teach; and

(B) instructors may receive full course credit by attending all of the remainder of the course.

(2) An instructor may ~~Instructor of a ride-along inspection course is eligible to~~ receive continuing education credit for a ride-along inspection course conducted by the instructor if:

(A) the course is completed during the term of the instructor's current license period; and

(B) ~~[if] the instructor provides the Commission [is provided] a certification of course completion no later than the expiration date of that license period [within one week of completion of the course], on a form approved by the Commission.~~

(3) Instructors of ride-along inspection course sessions may only receive up to 8 hours of continuing education credit for teaching the course per license period.

(f) ~~[(g)]~~ Continuing education credit for attendance at a meeting of the Texas Real Estate Inspector Committee. An inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for attendance in person at any meeting of the full Texas Real Estate Inspector Committee, provided that the inspector attend the entire meeting. Partial credit will not be awarded.

(g) ~~[(h)]~~ Continuing education credit for courses taken by persons who hold another occupational license issued by a governmental body in Texas. An inspector licensed in Texas may receive continuing education credit for a course taken to satisfy the continuing education requirements for another occupational license if:

(1) the inspector files the applicable form with the Commission;

(2) the inspector holds one of the following occupational licenses, including but not limited to:

- (A) plumber;
- (B) electrician;
- (C) architect;
- (D) professional engineer;
- (E) air conditioner and refrigeration technician; or
- (F) structural pest control applicator or technician;

(3) at the time the course was taken:

(A) the inspector held an active occupational license issued by a governmental body in Texas; and

(B) the course was approved for continuing education credit for the other occupational license;

(4) the inspector demonstrates successful completion of the course by submitting:

- (A) a course completion certificate;
- (B) a letter from the provider; or
- (C) other proof satisfactory to the Commission; and

(5) the primary subject matter of the course was a subject acceptable for continuing education credit for an inspector licensed in Texas.

§535.219. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(8);
- (2) §1102.118;
- (3) §1102.305;
- (4) §1102.364;
- (5) 22 TAC ~~§535.216(c)~~ [~~§535.216(d)~~];
- (6) 22 TAC §535.217;
- (7) 22 TAC §535.220(a) - (d);
- (8) 22 TAC §535.221; and
- (9) 22 TAC §535.223.

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §§1101.652(a)(3) - (4);
- (2) §1102.301;
- (3) 22 TAC §535.222;
- (4) 22 TAC §535.226(d) - (e); and
- (5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §§1101.652(a)(2), (5) - (6);
- (2) §1102.101;
- (3) §1102.102;
- (4) §1102.103;
- (5) §1102.302;
- (6) §1102.303;
- (7) §1102.304;
- (8) 22 TAC ~~§535.208(e)(2)~~ [~~§535.208(f)~~];
- (9) 22 TAC §535.211;
- (10) 22 TAC §535.215;
- (11) 22 TAC §535.220(e)(1), (3) - (7); and
- (12) 22 TAC §535.224(b)(1) - (2).

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under

§1101.702(a) of the Act, if a person has a history of previous violations.

§535.220. *Professional Conduct and Ethics.*

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector [~~inspector's~~], the inspector's business and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to ensure [~~insure~~] the continued promotion of the high standards of the real estate inspection profession and pledges himself or herself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

- (A) federally related mortgage loan originator;
- (B) mortgage broker;
- (C) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;
- (D) a title service provider;
- (E) an attorney;
- (F) a person who prepares documents, including notarization, delivery, and recordation;
- (G) a person who provides credit report services;
- (H) an appraiser;
- (I) an inspector;
- (J) a settlement agent;
- (K) a person who provides mortgage insurance services;
- (L) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties, or residential service contract;
- (M) a real estate agent or broker; and
- (N) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

- (A) the referral of inspections;
- (B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or
- (C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's written consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit:

(A) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred; or

(B) a payment at market rates to any person for goods actually furnished or for services actually performed.

(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector's business, and the inspection industry.

(g) Each active licensed inspector shall provide the consumer notice adopted under §531.18 of this chapter (relating to Consumer Information) [title] in the manner described by that section.

§535.224. *Practice and Procedure.*

(a) Proceedings shall be conducted in the manner contemplated by §§533.1 - 533.10 [533.8], 533.20 - 533.21, 533.25, 533.30 - 533.37 and 533.40 of this chapter [title] and with Chapter 2001, [the] Texas Government Code[, Chapter 2001, et seq].

(b) In addition to the grounds for disciplinary action provided in Chapter 1102, a license of an inspector may be suspended or revoked by the Commission if the inspector:

(1) fails to maintain professional liability insurance coverage, a bond or any other security acceptable by the Commission that provides coverage for violations of Subchapter G of Chapter 1102 during the period a license is active; or

(2) fails to notify the Commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, a bond or any other security acceptable by the Commission that provides coverage for violations of Subchapter G of Chapter 1102.

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

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Vanessa E. Burgess

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Texas Real Estate Commission

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For further information, please call: (512) 936-3284



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §§535.400 - 535.405

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.400. *Registration of Easement or Right-of-Way Agents.*

(a) Application. [A person who intends to be registered by the Commission as an easement or right-of-way agent must:]

(1) A person who intends to be registered by the Commission as an easement or right-of-way agent must [file an application for the registration]:

(A) file an application for the registration through the online process approved by the Commission[;] or

[~~(B)~~] on the form prescribed by the Commission for that purpose; and

[~~(C)~~] submit the required fee under §535.404 of this subchapter (relating to Fees).

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) To be eligible for registration, an applicant must:

(1) meet the following requirements at the time of the application:

(A) be 18 years of age;

(B) be a citizen of the United States or a lawfully admitted alien;

(2) comply with the fingerprinting and education requirements of the Act;

(3) meet the honesty, trustworthiness, and integrity requirements under the Act; and

(4) if [H] the applicant is a business entity, [the applicant must] designate one of its managing officers who is registered under this title as agent for the business entity.

(c) Texas residents who enter military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(d) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(e) The Commission will assign a registration number to each certificate holder [registrant] and provide each certificate holder [registrant] with a certificate of registration. Each registration issued by the Commission is valid until the last day of the month two years after the date the registration was issued.

(f) Termination of application. An application is terminated and is subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b) [(+) of this section within one year from the date the application is filed.

(g) The Commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with §1101.364 of the Act and Chapter 533 of this title (relating to Practice and Procedure).

(h) If the Commission determines that issuance of a probationary certificate is appropriate, the order entered by the Commission with regard to the application must set forth the terms and conditions for the probationary certificate. Terms for a probationary certificate may include any of the following:

(1) that the probationary certificate holder comply with the Act and with the rules of the Commission;

(2) that the probationary certificate holder fully cooperate with the Commission in the investigation of any complaint filed against the certificate holder;

(3) that the probationary certificate holder attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary certificate holder limit acts as an easement or right-of-way agent as prescribed in the order;

(5) that the probationary certificate holder report regularly to the Commission on any matter which is the basis of the probationary certificate;

(6) that the probationary certificate holder comply with any other terms contained in the order which have been found to be reasonable and appropriate by the Commission after consideration of the circumstances involved in the particular application; or

(7) that the probationary certificate holder comply with any other terms contained in an order from any other court or administrative agency under which the probationary certificate holder is bound.

(i) Unless the order granting a probationary certificate specifies otherwise, a probationary certificate holder may renew the certificate after the probationary period by satisfying the requirements under §535.403 of this subchapter (relating to Renewal of Registration).

(j) Each certificate holder [registrant] shall display the certificate of registration issued by the Commission in a prominent location in the certificate holder's [registrant's] place of business, as required by §1101.507 of the Act. If the certificate holder [registrant] maintains more than one place of business, the certificate holder [registrant] shall display either the certificate or a copy of the certificate in each place of business.

(k) Each certificate holder [registrant] shall provide a mailing address, phone number, and email address used in business, if available, to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a certificate holder [registrant] fails to update the contact information, the last known contact information provided to the Commission is the certificate holder's [registrant's] contact information.

§535.401. Required Notices.

(a) The Commission adopts by reference TREC No. ERW 4-1, Notice Regarding Easements and Rights-of-Way, which is published by and available from the Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Each certificate holder [registrant] shall, before a party in a transaction other than the party the certificate holder [registrant] represents is obligated to sell, buy, lease, or transfer a right-of-way or easement, provide to the party a copy of TREC No. ERW 4-1 completed by the certificate holder [registrant].

(c) Each certificate holder [registrant] shall provide the consumer notice adopted under §531.18 of this title (relating to Consumer Information) in the manner described by that section. [by:]

{(1) displaying it in a readily noticeable location in each place of business the registrant maintains; and}

{(2) providing a link to it labeled Texas Real Estate Commission Consumer Protection Notice, in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the registrant}.

§535.402. Complaints, Disciplinary Action and Appeals.

(a) The investigation of complaints and disciplinary action by the Commission against certificate holder [registrant] will be conducted in accordance with the Act and §535.141 of this chapter [title] (relating to Initiation of Investigation; Order Requirements). In addition to the grounds for revoking or suspending a registration listed in the Act, the Commission may revoke or suspend the registration of a certificate holder [registrant] on the following grounds:

(1) procuring or attempting to procure a registration by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application;

(2) failing or refusing on demand to produce a document, book, or record in the certificate holder's [registrant's] possession concerning an easement or right-of-way transaction involving the certificate holder [registrant] for examination by the Commission or its authorized agent; and

(3) failing to provide information requested by the Commission or its authorized agent in the course of an investigation of a complaint by the 14th day after the date of the request.

(b) Appeals from disciplinary orders against a certificate holder [registrant] are governed by §1101.658 of the Act and by Chapter 533 of this title (relating to Practice and Procedure).

§535.403. Renewal of Registration.

(a) Renewal application.

(1) A registration expires on the date shown on the face of the registration issued to the certificate [license] holder.

(2) If a certificate [license] holder intends to renew an unexpired registration, the certificate [license] holder must, on or before the expiration date of the current registration:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.404 of this subchapter [title] (relating to Fees); and

(C) comply with the fingerprinting and education requirements under the Act.

(b) Failure to provide information requested by the Commission in connection with a renewal application is grounds for disciplinary action under §1101.653 of the Act.

(c) A registrant who fails to timely renew must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(d) The Commission will deliver a registration renewal notice to a certificate [license] holder three months before the expiration of the certificate [license] holder's current registration. Failure to receive the certificate renewal notice does not relieve a certificate holder of the obligation to renew a certificate.

(e) The Commission is not required to notify a business entity such as a corporation, limited liability company, or partnership that has

failed to designate an officer, manager, or general partner who meets the requirements of §1101.502 of the Act. The Commission may not renew a registration issued to a business entity that has not designated an officer, manager, or general partner who meets the requirements of the Act.

(f) If the registration expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be timely filed when the application is received or postmarked no later than the first business day after the expiration date of the registration.

(g) Denial of Renewal. The Commission may deny an application for renewal of a registration if the certificate holder [registrant] is in violation of the terms of a Commission order.

§535.404. Fees.

The Commission shall charge and collect the following fees:

(1) a fee of \$200 for the application or renewal of a registration for a two-year period; and

(2) a fee of \$50 for deposit into the Real Estate Recovery Trust Account [real estate recovery trust account] upon the filing of an original or renewal application for a certificate of registration.

§535.405. Employee of Owner or Purchaser.

(a) An easement or right-of-way [right of way] registration is not required for an individual employed by an owner or purchaser for the purpose of selling, buying, leasing or transferring an easement or right-of-way for the owner. A person is considered to be an owner if it holds an interest in or wishes to acquire an easement or right-of-way or has an equitable title or right acquired by contract with the record title holder.

(b) An easement or right-of-way [right of way] agent employed by an owner or purchaser means a person employed and directly compensated by an owner or purchaser. An independent contractor is not an employee.

(c) Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid to another person is considered evidence of employment.

(d) An employee of a business easement or right-of-way certificate holder [registrant] is required to have an individual easement or right-of-way registration to sell, buy, lease, or transfer an easement or right-of-way.

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

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Vanessa E. Burgess
General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.2, Broker Responsibility, in Chapter 535, General Provisions. The amendments contain two types of changes: (i) those changes made as a result of the Commission's quadrennial rule review; and (ii) those changes recommended by the Commission appointed Broker Responsibility Working Group (BRWG).

The proposed changes made as a result of the Commission's quadrennial rule review update terminology and rule citations for consistency and clarity throughout the chapter. The change proposed in subsection (e) of §535.2 is made to clarify who may notify the Commission of the end of delegated supervision in a situation where the delegated supervisor is or later becomes a broker.

There are two additional amendments that were recommended by the BRWG. The first proposed change is found in subsection (i)(5). It increases the minimum number of times that a sales agent who performs a type of real estate brokerage activity must receive coaching or assistance from a competent, experienced license holder from one time to three times. The second proposed change is found in §535.2(j). That proposed change modifies the language of that subsection to accommodate the new rule 22 TAC §535.157, which requires both brokers and sales agents to respond to principals to a real estate transaction or their license holders within two calendar days.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and greater consumer protection through increased brokerage supervision of sales agents initial brokerage activity.

Except as noted below, for each year of the first five years, the proposed amendments are in effect the rule will not:

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

The proposed amendment to §535.2(j) does expand an existing regulation by expanding the minimum training requirements from one to three.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.2. Broker Responsibility.

(a) A broker is required to notify a sponsored sales agent in writing of the scope of the sales agent's authorized activities under the Act. Unless such scope is limited or revoked in writing, a broker is responsible for the authorized acts of the broker's sales agents, but the broker is not required to supervise the sales agents directly. If a broker permits a sponsored sales agent to conduct activities beyond the scope explicitly authorized by the broker, those are acts for which the broker is responsible.

(b) A broker owes the highest fiduciary obligation to the principal and is obliged to convey to the principal all information known to the agent which may affect the principal's decision unless prohibited by other law.

(c) A broker is responsible for the proper handling of trust funds placed with the broker and must comply with §535.146 of this chapter (relating to Maintaining Trust Money) [title].

(d) A broker is responsible for any property management activity by the broker's sponsored sales agent that requires a real estate license.

(e) A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of license holders sponsored by the broker. Any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission within 30 days of any such delegation that has lasted or is anticipated to last more than three consecutive months. The broker shall notify the Commission in the same manner within 30 days after the delegation of a supervisor has ended. In the event the delegated supervisor is a broker at the time of delegation or later becomes a broker, that broker may, in lieu of the sponsoring broker, notify the Commission in writing when the delegation ends. [It is the responsibility of the broker associate or newly licensed broker to notify the Commission in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.]

(f) Listings and other agreements for real estate brokerage services must be solicited and accepted in a broker's name.

(g) A broker is responsible to ensure that a sponsored sales agent's advertising complies with §535.154 of this chapter (relating to Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements) and §535.155 of this chapter (relating to Advertisements) [title].

(h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the broker must, at a minimum, maintain the following records in a format that is readily available to the Commission for at least four years from the date of closing, termination of the contract, or end of a real estate transaction:

- (1) disclosures;
- (2) commission agreements such as listing agreements, buyer representation agreements, or other written agreements relied upon to claim compensation;
- (3) substantive communications with parties to the transaction;
- (4) offers, contracts, and related addenda;
- (5) receipts and disbursements of compensation for services subject to the Act;
- (6) property management contracts;
- (7) appraisals, broker price opinions, and comparative market analyses; and
- (8) sponsorship agreements between the broker and sponsored sales agents.

(i) A broker who sponsors sales agents or is a designated broker for a business entity shall maintain, on a current basis, written policies and procedures to ensure that:

(1) Each sponsored sales agent is advised of the scope of the sales agent's authorized activities subject to the Act and is competent to conduct such activities, including having competence in the geographic market area where the sales agent represents clients.

(2) Each sponsored sales agent maintains their license in active status at all times while they are engaging in activities subject to the Act.

(3) Any and all compensation paid to a sponsored sales agent for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.

(4) Each sponsored sales agent is provided on a timely basis, before the effective date of the change, notice of any change to the Act, Commission rules [Rules], or Commission promulgated contract forms.

(5) In addition to completing statutory minimum continuing education requirements, each sponsored sales agent receives such additional educational instruction the broker may deem necessary to obtain and maintain, on a current basis, competency in the scope of the sponsored sales agent's practice subject to the Act. At a minimum, when a sales agent performs a type of real estate brokerage activity for the first three times [time], the broker must require that the sales agent receive coaching and assistance from an experienced license holder competent for that activity.

(6) Each sponsored sales agent complies with the Commission's advertising rules.

(7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers

are maintained by the broker with appropriate controls in compliance with §535.146 of this chapter.

(8) Records are properly maintained pursuant to subsection (h) of this section.

(j) In addition to the requirements of §535.157 of this chapter (relating to Obligation to Respond Timely), a [A] broker or supervisor delegated under subsection (e) of this section must respond to sponsored sales agents [~~clients, and license holders representing other parties in real estate transactions~~] within two calendar days.

(k) A sponsoring broker or supervisor delegated under subsection (e) of this section shall deliver mail and other correspondence from the Commission to their sponsored sales agents within three calendar days after receipt.

(l) When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.

(m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored sales agent.

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

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Texas Real Estate Commission

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CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.54, Hearing on License Denial: Probationary Licenses; §535.55, Education and Sponsorship Requirements for a Sales Agent License; §535.56, Education and Experience Requirements for a Broker License; §535.91, Renewal of a Real Estate License; §535.92, Continuing Education Requirements; §535.101, Fees; §535.132, Eligibility for Licensure; and §535.216, Renewal of License, in Chapter 535, General Provisions.

The proposed amendments to §535.91 eliminate the "lookback period" currently found in §535.93 (currently proposed for repeal), which allows a license holder to renew after the expiration date of their license without any lapse in active licensure, as long as certain certifications are made. Under these proposed changes, a license holder who late renews (meaning no later than 6 months after the expiration date) would automatically renew on inactive status. A corresponding change is made to §535.216 relating to inspector licenses. Proposed §535.91 also adds a new, single subsection addressing license reinstatement--the requirements of which are currently found in several different rule sections--as well as a subsection regarding renewing on inactive status, to be more consistent with §535.216. As a result, language related to license reinstatement is removed from §535.55 and §535.56.

The proposed change to §535.54 reflects the proposed repeal of §535.93. The proposed change to §535.101 would remove the late reporting fee of \$250 to reactivate a license, as a result of the elimination of the lookback period in §535.91.

In 22 TAC §535.132, proposed changes are made to remove references to the waiver provisions in §535.55 and §535.56, as well as residency requirements, which were removed from Chapter 1101, Texas Occupations Code, as a result of the agency's most recent Sunset review.

In order to mirror the format of §535.216 (which relates to inspectors), the relevant language of §535.93 has been added to §535.91.

Subsection (b) of §535.55 also contains a proposed change recommended by the Education Standards Advisory Committee that would require a sales agent to complete the 30-hour qualifying real estate brokerage course as part of the additional 90 hours of qualifying courses that must be completed by the expiration date of the sales agent's initial licensing period.

The remainder of the changes are either updates to terminology or form for consistency throughout the chapter or are made to reflect updated processes.

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

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, ensuring relevant education for new license holders, and greater consumer protection by eliminating the "lookback period."

Except as noted below, for each year of the first five years the proposed amendments are in effect, the amendments will not:

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

The proposed amendments to §535.101 will decrease fees paid to the agency by removing the late reporting fee authorized by subsection (a)(21). The proposed change to §535.55 regarding the real estate brokerage course requirement will not increase the overall education hours, but will require a specific course be

taken and in a majority of cases, will also result in a real estate broker license applicant having to take the course twice if the rule is ultimately adopted. Finally, the proposed amendments to §535.132 will limit an existing regulation to correspond with applicable law.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.54 - 535.56

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.54. *Hearing on License Denial: Probationary Licenses.*

(a) The Commission will notify an applicant if the application for license is denied. Any hearing on denial of a license will be conducted in accordance with §1101.364 of the Act and Chapter 533 of this title (relating to Practice and Procedure).

(b) If the Commission determines that issuance of a probationary license is appropriate, the order entered by the Commission with regard to the application must set forth the terms and conditions for the probationary license. Terms for a probationary license may include any of the following:

- (1) that the probationary license holder comply with the Act and with the rules of the Commission;
- (2) that the probationary license holder fully cooperate with the Commission in the investigation of any complaint filed against the license holder;
- (3) that the probationary license holder attend a prescribed number of classroom hours in specific areas of study during the probationary period;
- (4) that the probationary license holder limit real estate brokerage practice as prescribed in the order;
- (5) that the probationary license holder report regularly to the Commission on any matter which is the basis of the probationary license holder;
- (6) that the probationary license holder comply with any other terms contained in the order which have been found to be reasonable and appropriate by the Commission after consideration of the circumstances involved in the particular application; or
- (7) that the probationary license holder comply with any other terms contained in an order from any other court or administrative agency under which the probationary license holder is bound.

(c) Unless the order granting a probationary license specifies otherwise, a probationary license holder may renew the license after

the probationary period by filing a renewal application, satisfying applicable education requirements and paying the prescribed renewal fee.

(d) If a license expires before the completion of a probationary term and the license holder files a late renewal application as authorized by §535.91 [§535.93] of this chapter (relating to Renewal of a Real Estate License) [subchapter], any remaining probationary period shall be reinstated effective as of the day following the renewal of the previous license.

§535.55. *Education and Sponsorship Requirements for a Sales Agent License.*

(a) Education requirements for an initial sales agent license. An applicant for an initial sales agent license must provide the Commission with satisfactory evidence of completion of 180 hours of qualifying real estate courses as required under the Act as follows:

- (1) 60 hours of Principles of Real Estate;
- (2) 30 hours of Law of Agency;
- (3) 30 hours of Law of Contracts;
- (4) 30 hours of Promulgated Contracts Forms; and
- (5) 30 hours of Real Estate Finance.

(b) Additional education requirements. A sales agent must successfully complete an additional 90 classroom hours in qualifying courses, including the 30 hour qualifying real estate brokerage course, by the expiration date of the sales agent's initial licensing period [and report those hours] in accordance with the requirements of §535.91 of this chapter (relating to Renewal of a Real Estate License) [title].

[(c) The Commission may waive the education required for a real estate sales agent license if the applicant:]

[(1) was licensed either as a Texas real estate broker or as a Texas real estate sales agent within two years before the filing of the application; and]

[(2) completed any qualifying real estate courses or real estate related courses that would have been required for a timely renewal of the prior license, or, if the renewal of the prior license was not subject to the completion of qualifying real estate courses or real estate related courses, completed at least the number of hours of continuing education courses required by §535.92(a) of this title within the two-year period before filing an application for an active license.]

(c) [(d)] The Commission will issue an applicant an inactive sales agent license upon satisfaction of subsection (a) of this section and subsection (c) of §535.57 of this subchapter (relating to Examinations). An inactive sales agent may not practice as a licensed sales agent until sponsored by an active Texas licensed broker.

§535.56. *Education and Experience Requirements for a Broker License.*

(a) Education requirements.

(1) An applicant for a broker license must provide the Commission with satisfactory evidence of completion of:

(A) 270 hours of qualifying real estate courses as required under §535.55 of this subchapter (relating to Education and Sponsorship Requirements for a Sales Agent License), which must include the 30 hour qualifying real estate brokerage course completed not more than two years before the application date; and

(B) an additional 630 classroom hours of related education from one or more of the following categories:

(i) qualifying courses defined under §535.64 of this chapter (relating to Content Requirements for Qualifying Real Estate Courses);

(ii) Commission-approved continuing education courses; or

(iii) courses taken for credit from an accredited college or university in any of the following areas: accounting, advertising, architecture, business or management, construction, finance, investments, law, marketing, or ~~[and]~~ real estate.

(2) An applicant who has earned a bachelor's degree or higher from an accredited college or university will be deemed to have satisfied the related education requirements for a broker license. A copy of the college transcript awarding the degree must be submitted as evidence of completion of the degree.

(b) Experience Requirements.

(1) An applicant for a broker license must have four years of experience actively practicing as a broker or sales agent in Texas during the five years preceding the date the application is filed. For purposes of this section:

(A) Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

(B) A person licensed in another state may derive the required four years' experience from periods in which the person was licensed in one or more states. A person who is the designated broker of a business entity that is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state.

(C) An applicant must have performed at least one transaction per year as described in subsection (c) of this section for at least four of the five years preceding the date the application is filed.

(2) An applicant for a broker license must demonstrate not less than 360 points of qualifying practical experience obtained during the period required by subsection (b)(1) of this section, using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed.

(A) An applicant will receive credit for such experience according to the point system set forth in subsection (c) of this section.

(B) Upon request by the Commission, either prior to or after licensure, an applicant shall provide documentation to substantiate any or all of the experience claimed by the applicant.

(C) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

(c) Credit for experience. Experience points shall be credited to an applicant in accordance with the following schedule for active licensed sales agent or broker activity only:

(1) Residential transactions including single family, condo, co-op unit, multi-family (1 to 4-unit) and apartment unit leases:

(A) Closed purchase or sale--30 points per transaction.

(B) An executed lease for a landlord or tenant--5 points per transaction.

(C) rental property management rent collection--2.5 points per property.

(D) Closed purchase or sale of an unimproved residential lot--30 points per transaction.

(2) Commercial transactions, including apartments (5 units or more), office, retail, industrial, mixed use, hotel/motel, parking facility/garage, and specialty:

(A) Closed purchase or sale--50 points per transaction.

(B) An executed lease, renewal or extension for a landlord or tenant--10 points per year of the lease, renewal or extension up to a five year maximum per transaction.

(C) rental property management rent collection--15 points per property.

(3) Farm and Ranch and unimproved land transactions:

(A) Closed purchase or sale--30 points.

(B) An executed lease for a landlord or tenant--5 points per transaction.

(C) Rental property management rent collection--5 points per property.

(4) Delegated ~~[Brokerage team management or delegated]~~ supervision--12 points per month.

(d) Documentation of applicable experience.

(1) An applicant shall have the burden of establishing to the satisfaction of the Commission that the applicant actually performed the work associated with the real estate transaction claimed for experience credit.

(2) If an applicant is unable to obtain documentation and/or the signature of a sponsoring broker to support their claim for experience, the applicant must use TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature, to explain that the applicant made a good faith effort to obtain the documentation and/or signature, describing the effort to obtain the documentation and reasons why it is not available. In addition, the applicant must submit two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience, each signed by a different individual who knows the applicant or is familiar with the transaction(s) at issue attesting to the applicant's efforts to obtain the documentation and/or signature, and attesting to the fact that the applicant performed the work for which the applicant is requesting points.

(3) The Commission may request additional documentation, rely on the documentation provided under this section, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and this section.

~~[(e) Waiver of education and experience requirements. Notwithstanding §1101.451(f) of the Act and subsections (a) - (d) of this section, the Commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions:]~~

~~[(1) The applicant was licensed as a Texas real estate broker within two years prior to the filing of the application.]~~

~~[(2) The applicant has completed at least the number of hours of continuing education courses required by §535.92(a), within the two-year period prior to the filing of an application for an active license, including all applicable current non-elective courses.]~~

{(3) The applicant has at least two years of active experience as a licensed real estate broker or sales agent during the four-year period preceding the date the application is filed.}

(c) [(f)] Experience forms. Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91, §535.92

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.91. *Renewal of a Real Estate License.*

(a) Renewal application.

(1) A real estate license expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.101 of this chapter [title] (relating to Fees);

(C) comply with the fingerprinting requirements under the Act; and

(D) except as provided for in subsections [subsection] (g) and (h) of this section, satisfy the continuing education requirements applicable to that license.

(3) The Commission may request additional information be provided to the Commission in connection with a renewal application.

(4) A license holder is required to provide information requested by the Commission not later than the 30th day after the date the

Commission [commission] requests the information. Failure to provide information is grounds for disciplinary action.

(b) Renewal Notice.

(1) The Commission will deliver a license renewal notice to a license holder three months before the expiration of the license holder's current license.

(2) If a license holder intends to renew a license, failure to receive a license renewal notice from the Commission does not relieve a license holder from the requirements of this subsection.

(3) The Commission has no obligation to notify any license holder who has failed to provide the Commission with the person's mailing address and email address or a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or partner who meets the requirements of the Act.

(c) Timely renewal of a license.

(1) A renewal application for an individual broker or sales agent is filed timely if it is received by the Commission, or postmarked, on or before the license expiration date.

(2) A renewal application for a business entity broker is filed timely, if the application and all required supporting documentation is received by the Commission, or postmarked, not later than the 10th business day before the license expiration date.

(3) If the license expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be filed timely if the application is received or postmarked no later than the first business day after the expiration date of the license.

(d) Initial renewal of sales agent license. A sales agent applying for the first renewal of a sales agent license must:

(1) ~~successfully complete [submit documentation to the Commission showing successful completion of]~~ the additional educational requirements of §535.55 of this chapter [title] (relating to Education and Sponsorship Requirements for a Sales Agent License) [no later than 10 business days] before [the day] the sales agent files the renewal application; and

(2) fulfill the continuing education requirements of §535.92(a)(1), (a)(2), and (a)(4) of this chapter [title] (relating to Continuing Education Requirements), if applicable.

(e) Renewal of license issued to a business entity. The Commission will not renew a license issued to a business entity unless the business entity:

(1) has designated a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner who:

(A) is a licensed broker in active status and good standing with the Commission; and

(B) completes any applicable continuing education required under §535.92 of this chapter [title];

(2) maintains errors and omissions insurance with a minimum annual limit of \$1 million per occurrence if the designated broker owns less than 10 percent of the business entity; and

(3) is currently eligible to transact business in Texas.

(f) Renewal and pending complaints.

(1) The Commission may renew the current license of a license holder that has a complaint pending with the Commission, provided the license holder meets all other applicable requirements of this section.

(2) Upon completion of the investigation of the pending complaint, the Commission may suspend or revoke the license, after notice and hearing in accordance with the Administrative Procedure Act, Chapter 2001, Texas Government Code[; Chapter 2001].

(g) Renewal on inactive status.

(1) A license holder may renew a license on inactive status.

(2) A license holder is not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

(h) ~~[(g)]~~ Renewal with deferred continuing education.

(1) A license holder may renew an active license without completion of required continuing education and may defer completion of any outstanding continuing education requirements for an additional 60 days from the expiration date of the current license if the license holder:

(A) meets all other applicable requirements of this section; and

(B) pays the continuing education deferral fee required by §535.101 of this chapter [title] at the time the license holder files the renewal application with the Commission.

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

~~[(3) To activate an inactive license, the license holder must meet the requirements of Subchapter L of this Chapter.]~~

(3) ~~[(4)]~~ Credit for continuing education courses for a subsequent licensing period does not accrue until after all deferred continuing education has been completed for the current licensing period.

(i) Late Renewal.

(1) Subject to the requirements of this subsection and §1101.451(e) of the Act, a license holder may late renew a license after the expiration date of that license if:

(A) the license has been expired for less than six months.

(B) the license holder files the application to renew on a form approved by the Commission for that purpose; and

(C) the license holder submits the required fees under §535.101 of this chapter.

(2) Provided the license holder meets all the requirements of paragraph (1) of this subsection, the Commission will renew the license on inactive status.

(j) License Reinstatement.

(1) If a license has been expired for more than six months, a license holder may not renew the license.

(2) A license holder may reinstate an expired license if the license holder:

(A) has held an individual broker or sales agent license in this state within the two years preceding the date the reinstatement application is filed;

(B) submits the required fees under §535.101 of this chapter; and

(C) satisfies the Commission as to the applicant's honesty, trustworthiness, and integrity.

(3) An applicant for reinstatement is not required to take an examination.

(4) Provided the license holder meets the requirements of paragraph (2) of this subsection, the Commission will reinstate:

(A) a broker license on active status if the continuing education that would have been required for a timely renewal during the two years preceding the date the application is filed is completed, except as provided in paragraph (5) of this subsection

(B) a sales agent license on inactive status.

(5) A broker may file an application to reinstate a license on inactive status under this subsection.

(k) Reactivation of a license on inactive status under this section is governed by Subchapter L of this chapter (relating to Inactive License Status).

(l) ~~[(h)]~~ Denial of Renewal. The Commission may deny an application for renewal of a license if the license holder is in violation of the terms of a Commission order.

(m) ~~[(i)]~~ Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

§535.92. Continuing Education Requirements.

(a) Required continuing education. 18 hours of continuing education are required for each renewal of a real estate sales agent or broker license and must include:

(1) a four hour Legal Update I: Laws, Rules and Forms course;

(2) a four hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) three hours on the subject of real estate contracts from one or more Commission approved courses; and

(4) a six hour broker responsibility course, if the license holder:

(A) sponsors one or more sales agent at any time during the current license period;

(B) is a designated broker of a business entity that sponsors one or more sales agent at any time during the designated broker's current license period; or

(C) is a delegated supervisor under §535.2(e) of this chapter (relating to Broker Responsibility) [title].

(b) Awarding continuing education credit. The Commission will award credit to a license holder for an approved continuing education course upon receipt of a course completion roster from a CE provider as required under §535.75 of this chapter (relating to Responsibilities and Operations of Continuing Education Providers) [title].

(c) Continuing education credit for qualifying courses. Real estate license holders may receive continuing education elective credit for qualifying real estate courses or qualifying real estate inspection courses that have been approved by the Commission or that are accepted by the Commission for satisfying educational requirements for obtaining or renewing a license. Qualifying real estate courses must be at least 30 classroom hours in length to be accepted for continuing education elective credit.

(d) Continuing education credit for course taken outside of Texas. A course taken by a Texas license holder to satisfy continuing education requirements of a country, territory, or state other than Texas may be approved on an individual basis for continuing education elective credit in Texas upon the Commission's determination that:

(1) the Texas license holder held an active real estate license in a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for a real estate license by a country, territory, or state other than Texas and, if a correspondence course, was offered by an accredited college or university;

(3) the Texas license holder's successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or [sueh] other proof [as is] satisfactory to the Commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit in Texas; and

(5) the Texas license holder has filed a Credit Request for an Out-of-State Course [Credit Request], with the Commission.

(e) Continuing education credit for courses offered by the State Bar. To request continuing education elective credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a license holder is required to file an Individual Credit Request for State Bar Course.

(f) Continuing education credit for attendance at Commission meeting. A real estate license holder may receive up to four hours of continuing education elective credit per license period for attendance in person at a February Commission meeting.

(g) Continuing education credit for instructors. Instructors may receive continuing education credit for real estate qualifying courses subject to the following guidelines:

(1) An instructor may receive credit for those segments of the course that the instructor teaches by filing an [a completed] Instructor Credit Request.

(2) An instructor may receive full course credit by attending any segment that the instructor does not teach in addition to those segments the instructor does teach.

(h) Limitations. The Commission will not award credit to a license holder who attends or instructs the same course more than once during:

(1) the term of the current license period; or

(2) the two-year period preceding the filing of an renewal application for a license after the license expiration date as provided for under §535.91 [§535-93] of this subchapter (relating to Renewal of a Real Estate License) [title] or return to active status as provided for under Subchapter L of this chapter (relating to Inactive License Status) [Chapter].

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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SUBCHAPTER J. FEES

22 TAC §535.101

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

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

(1) a fee of \$150 for filing an original or reinstatement application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of \$72 for the timely renewal of a real estate broker license;

(3) a fee of \$120 for filing an application to change [step down] from a real estate broker license to a real estate sales agent license;

(4) a fee of \$150 for filing an original or reinstatement application for a real estate sales agent license, which includes a fee for transcript evaluation;

(5) a fee of \$66 for the timely renewal of a real estate sales agent license;

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

(7) a fee equal to two [2] times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(8) the fee charged by an examination provider pursuant to a contract with the Commission for taking a license examination;

(9) a fee of \$10 for deposit into the Real Estate Recovery Trust Account [~~real estate recovery trust account~~] upon the filing of an original sales agent or broker application;

(10) a fee of \$50 to request an inactive broker license be returned to active status;

(11) a fee of \$50 for filing a fitness determination;

(12) a fee of \$400 for filing an application for accreditation of a qualifying education program for a period of four years;

(13) after initial approval of accreditation, a renewal fee of \$200 a year for operation of a qualifying real estate education program;

(14) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying education course for a period of four years:

(A) \$10 for content and examination review;

(B) \$10 for classroom delivery design and presentation review; and

(C) \$20 for distance education delivery design and presentation review;

(15) a fee of \$400 for filing an application for accreditation as a continuing education [~~Continuing Education~~] provider for a period of two years;

(16) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing education course for a period of two years:

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review;

(17) the fee required under paragraphs (14)(C) and (16)(C) will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;

(18) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application;

(19) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system; and

(20) a continuing education deferral fee of \$200 [~~;~~ and]

[(21)] [a late reporting fee of \$250 to reactivate a license under §535.93 of this chapter (relating to Late Renewal Applications)].

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last

known mailing address of the license holder or applicant as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under §1101.652(a)(3) of the Act [Texas Occupations Code, §1101.652(a)(3)], against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

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

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Vanessa E. Burgess

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SUBCHAPTER M. NONRESIDENTS

22 TAC §535.132

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.132. *Eligibility for Licensure.*

[(a) A person residing outside of Texas may apply for a license under this section if the person:]

[(1) is licensed as a foreign broker; or]

[(2) was licensed as a Texas real estate salesperson or broker no more than two years before filing of the application.]

[(3) The commission may waive education and experience requirements if the applicant satisfies the conditions established by §535.56 or §535.55 of this title.]

[(b) A business entity created or chartered under the laws of a state other than Texas may apply for a Texas real estate broker license if the entity:]

[(1) is licensed as a broker by the state in which it was created or chartered;]

[(2) is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign business entity; or]

[(3) was created or chartered in a state that does not license business entities and the entity is lawfully engaged in the practice of

real estate brokerage in that state and meets all other requirements for applications for a license in Texas.]

(a) [(e)] An individual licensed as a broker who subsequently moves to a state other than Texas is not required to maintain an office in Texas [unless the individual sponsors a salesperson in Texas].

(b) [(d)] To be eligible to receive a license and maintain an active license, a business entity created or chartered in a state other than Texas must designate a person to act for it who meets the requirements of §1101.355 of the Act, although the designated broker is not required to be a resident of Texas. Foreign business entities must also be permitted to engage in business in Texas to receive a Texas real estate broker license.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.216

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.216. *Renewal of License.*

(a) Renewal application.

(1) A license issued by the Commission under Chapter 1102[; Occupations Code,] expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) pay the appropriate fee as required by §535.210 of this subchapter (relating to Fees) [title];

(C) comply with the fingerprinting requirements of Chapter 1102[; Occupations Code];

(D) satisfy the applicable continuing education requirements of Chapter 1102[; Occupations Code,] and this subchapter; and

(E) provide proof of financial responsibility as required in Chapter 1102[; Occupations Code,] on a form approved by the Commission.

(3) An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status.

(b) Renewal Notice.

(1) The Commission will send a renewal notice to each license holder at least 90 days before the license expiration date.

(2) If a license holder intends to renew a license, failure to receive a renewal notice does not relieve the license holder from responsibility of applying for renewal as required in this section.

(c) Request for information.

(1) The Commission may request a license holder to provide additional information to the Commission in connection with a renewal application.

(2) A license holder must provide the information requested by the Commission within 30 days after the date of the Commission's request.

(3) Failure to provide the information requested within the required time is grounds for disciplinary action under Chapter 1102[; Occupations Code].

(d) Renewal on inactive status.

(1) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status.

(2) Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

(e) Late Renewal.

(1) If a license has been expired for less than six months, a license holder may renew the license by:

(A) filing a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) paying the appropriate late renewal fee as required by §535.210 of this subchapter [title (related to Fees)];

(C) satisfying the applicable continuing education requirements; and

(D) providing proof of financial responsibility on a form approved by the Commission.

(2) Provided the license holder meets all the requirements of this subsection, the Commission will renew the license on an inactive status. [To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission will renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.]

(3) Reactivation of a license on inactive status under this subsection is governed by §535.215 of this subchapter (relating to Inactive Inspector Status).

(f) License Reinstatement.

(1) If a license has been expired for more than six months, a license holder may not renew the license.

(2) A license holder may reinstate an expired license if the license holder:

(A) has held a professional inspector or real estate inspector license during the 24 months preceding the date the reinstatement application is filed;

(B) submits evidence satisfactory to the commission of successful completion of the continuing education hours required for the renewal of that license; and

(C) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

(3) Applicants for a real estate inspector license must submit evidence of sponsorship by a professional inspector.

(4) An applicant for reinstatement is not required to take an examination.

(g) Denial of Renewal or Reinstatement. The Commission may deny an application for license renewal or reinstatement if a license holder is in violation of the terms of a Commission order.

(h) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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

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Vanessa E. Burgess

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Texas Real Estate Commission

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.93

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §535.93, Late Renewal Applications, in Chapter 535, General Provisions.

The purpose of the proposed repeal is to eliminate the "look-back period" currently found in §535.93, which currently allows a license holder to renew after the expiration date of their license without any lapse in active licensure, as long as certain certifications are made. With this repeal and the additional proposed

changes in 22 TAC Chapter 535, a license holder who late renews (meaning no later than 6 months after the expiration date) would automatically renew on inactive status. In order to mirror the format of rule 22 TAC §535.216 (which relates to inspectors), the relevant language of §535.93 has been added to 22 TAC §535.91. As a result, §535.93 is no longer necessary.

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

Ms. Burgess also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, ensuring relevant education for new license holders, and greater consumer protection by eliminating the "lookback period."

Except as noted below, for each year of the first five years the proposed repeal is in effect, the repeal will not:

-create or eliminate a government program;

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

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

-require an increase in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

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

-positively or adversely affect the state's economy.

The proposed repeal of §535.93 technically repeals an existing regulation; however, a majority of that language is consolidated in 22 TAC §535.91, which also has proposed changes.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.93. *Late Renewal Applications.*

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

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.157

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.157, *Obligation to Respond Timely*, in Chapter 535, General Provisions. The proposed new §535.157 requires a broker or sales agent to respond to their principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party to a real estate transaction within two calendar days. The proposed new rule was recommended by the Commission appointed Broker Responsibility Working Group.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and increased consumer protection for members of the public who are parties to a real estate transaction.

Except as noted below, for each year of the first five years the proposed new rule is in effect, the rule will not:

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

The rule does create a new regulation. That regulation is intended to better protect consumers who are parties to a real estate transaction by requiring license holders to respond to communications promptly.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed new rule.

§535.157. *Obligation to Respond Timely.*

A broker or sales agent must respond to his or her principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party to a real estate transaction within two calendar days.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §535.212, *Education and Experience Requirements for a License*, in Chapter 535, General Provisions, as a result of the expiration of this section by rule.

The proposed repeal was recommended by the Texas Real Estate Inspector Committee.

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

no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as ensuring relevant education for license holders.

Except as noted below, for each year of the first five years the proposed repeal is in effect, the repeal will not:

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

The proposed repeal of §535.212 has technically already been repealed by the rule language itself; however, this reflects the fact that this rule has been largely replaced by 22 TAC §535.214.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this repeal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.212. Education and Experience Requirements for a License.

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

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22 TAC §535.222

The Texas Real Estate Commission (TREC) proposes amendments to §535.222, Inspection Reports, in Subchapter R of Chapter 535, General Provisions.

The proposed amendments to §535.222 address the situation where payment is received prior to the scheduled inspection and require the report to be delivered to the client within two days of completion of the inspection.

The Texas Real Estate Inspector Committee recommends the proposed amendments.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed is in effect, the public benefit anticipated as a result of the change is improved clarity for license holders and greater consumer protection when engaging a licensed inspector.

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

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

Comments on the proposal may be submitted to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, via email to general.counsel@trec.texas.gov, or through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.222. Inspection Reports.

- (a) For each inspection, the inspector shall[=]

~~[(1)]~~ prepare a written inspection report noting observed deficiencies and other items required to be reported. Unless otherwise agreed in writing by the client, the inspector shall:~~;~~ and

~~(1)~~ ~~[(2)]~~ deliver the report to the client within two days of receipt of payment in full for the inspection; or ~~;~~ ~~unless otherwise agreed in writing by the client.~~

(2) if payment in full is received before the scheduled inspection, deliver the report to the client within two days of completion of the inspection.

(b) The inspection report shall include:

(1) the name and license number of each inspector who participated in performing the inspection, as well as the name(s) and license number(s) of any supervising real estate inspector(s) and sponsoring professional inspector(s), if applicable;

(2) the address or other unique description of the property on each page of the report; and

(3) the client's name.

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

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.1, §537.11

The Texas Real Estate Commission (TREC) proposes new rule 22 TAC, §537.1, Definitions, and amendments to §537.11, Use of Standard Contract Forms, in Chapter 537, Professional Agreements and Standard Contracts.

The proposed new rule adds a definitions section for ease of reading and for consistency with other Commission rule chapters. This includes a definition for the new term "informational items," which is intended to better describe the type of information that a license holder can add to a contract form.

The proposed amendments to §537.11 reorganize and consolidate the rule for clarity, and simplify the language regarding when a license holder is required to use a Commission-approved contract form and what is considered the unauthorized practice of law. Specifically, the proposed changes in subsection (a) align the rule language more closely with the applicable statutory language and simplify the list of exceptions related to contract form use by license holders.

Subsections (b) - (d) provide further guidance to license holders and members of the public on what the Commission considers to be the unauthorized practice of law. Of note, subsection (d)(2) provides that it is not the practice of law to add language to or strike language from a contract form, if specifically instructed

in writing by a principal, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made.

Finally, the proposed changes to subsection (h) update the language regarding reproduction of Commission-approved contract forms to better account for changes in technology.

The Commission's Unauthorized Practice of Law Working Group recommends the proposed amendments.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of adopting the sections as proposed will be improved clarity and greater transparency for members of the public and license holders.

Except as noted below, for each year of the first five years the proposed amendments and new rule are in effect, the amendments will not:

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

The proposed changes to subsection (a)(4) of §537.11 limit an existing regulation by reducing the requirements for use of a contract form by a license holder when there is no Commission-approved contract form.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of

Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.1. Definitions.

The following terms and phrases, when used in this chapter, have the following meanings:

- (1) Commission--The Texas Real Estate Commission.
- (2) Contract forms--Contracts and related addenda, including notices, amendments, and other documents, used in the sale, exchange, option, or lease of any interest in real property.
- (3) Informational item--A statement that completes a blank in a contract form, discloses factual information, or provides instructions.
- (4) License holder -- A real estate broker or sales agent licensed under Chapter 1101, Texas Occupations Code.
- (5) Mandatory use - Unless an exception applies under subsection (a) of section 537.11 (relating to Use of Standard Contract Forms; Unauthorized Practice of Law), use of the contract form is required by a license holder.
- (6) Voluntary use - A license holder may, but is not required to, use the contract form.

§537.11. Use of Standard Contract Forms; Unauthorized Practice of Law.

(a) When negotiating contracts binding the sale, exchange, option, or lease [or rental] of any interest in real property, a [real estate] license holder shall use only those contract forms approved for mandatory use by the [Texas Real Estate] Commission [(the Commission)] for that type of transaction with the following exceptions:

- (1) transactions in which the license holder is functioning solely as a principal, not as an agent;
- (2) transactions in which an agency of the United States government requires a different form to be used;
- (3) transactions for which a contract form [; or addendum to a contract form,] has been prepared by the [a] property owner or prepared by an attorney [a lawyer] and required by a property owner; or
- (4) transactions for which no [mandatory] contract form [or addendum] has been approved for mandatory use by the Commission, and the license holder uses a form:

(A) prepared by an attorney [a lawyer] licensed by this state, or a trade association in consultation with an attorney [one or more lawyers] licensed by this state [; for the particular type of transactions involved] that contains:

- (i) the name of the attorney [lawyer] or trade association who prepared the form;
- (ii) the name of the broker or trade association for whom the form was prepared;
- (iii) a statement indicating the type of transaction for which the attorney [lawyer] or trade association has approved the use of the form; and
- (iv) any restrictions on the use of the form; and
- (v) if applicable, an explanation of how the form [it is an addendum that] changes the rights, obligations, or remedies of

a party under a contract [or addendum] form approved for mandatory use by the Commission and [for mandatory use, the form must also include:]

~~[(I)]~~ a statement about how the addendum changes the rights, obligations or remedies of a party, with a reference to the relevant paragraph number in the mandatory use form;]

~~[(II)]~~ a statement that the form is not a mandatory Texas Real Estate Commission form; and]

~~[(III)]~~ a statement that [Commission rules prohibit real estate] license holders may not practice law or give [from giving] legal advice; or

(B) prepared by the Texas Real Estate Broker-Lawyer Committee [(the committee)] and approved by the Commission for voluntary use by license holders.

(b) A license holder may not:

- (1) practice law;
- (2) directly or indirectly offer, give or attempt to give legal advice;
- (3) give advice or opinions as to the legal effect of any contract forms [contracts] or other such instruments which may affect the title to real estate;
- (4) give opinions concerning the status or validity of title to real estate;

(5) draft or recommend language to be included in a contract form defining or affecting the rights, obligations, or remedies of the principals of a real estate transaction, including escalation, appraisal, or [other] contingency clauses;

(6) add informational items [factual statements or business details] to a form approved by the Commission if the Commission has approved a form [or addendum] for mandatory use for that purpose;

(7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing an attorney [a lawyer]; or

(8) obtain legal advice from an attorney [employ or pay for the services of a lawyer], directly or indirectly, for [to represent] a principal in [to] a real estate transaction in which the license holder is acting as an agent.

(c) This section does not:

(1) limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate;

(2) prevent the license holder from explaining to the license holder's principals the meaning of informational items or choices in a contract form, as long as the license holder does not practice law or give legal advice;

(3) limit a license holder from employing and paying for the services of an attorney to represent only the license holder in a real estate transaction; or

(4) limit a license holder from reimbursing a principal for attorney's fees incurred.

(d) It is not the practice of law for a license holder to:

(1) add informational items to [fill in the blanks in] a contract form authorized for use by this section; or

(2) if specifically instructed in writing by a principal, add language to or strike language from a contract form, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made. [A license holder shall only add factual statements and business details or shall strike text as directed in writing by the principals.]

[(e) This section does not prevent the license holder from explaining to the principals the meaning of the alternative choices, factual statements, and business details contained in an instrument so long as the license holder does not offer or give legal advice.]

(c) [(f)] When a transaction involves unusual matters that should be reviewed by an attorney [a lawyer] before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the license holder's principals to [that each should] consult an attorney [a lawyer of the principal's choice] before executing the instrument.

[(g) A license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction.]

(f) [(h)] A license holder shall advise the license holder's principals that the instrument they are about to execute is binding on them.

(g) Contract forms approved by the Commission are published by and available from the Commission at www.trec.texas.gov.

[(i) Forms approved by the Commission may be reproduced only from the following sources:]

[(1) electronically reproduced from the files available on the Commission's website:]

[(2) printed copies made from copies obtained from the Commission:]

[(3) legible photocopies made from such copies; or]

[(4) computer-driven printers following these guidelines:]

[(A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms. Blanks may be scalable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:]

[(i) limited to use only by a principal of a transaction; and]

[(ii) in a format and authenticated in manner acceptable to the Commission.]

[(B) Typefaces or fonts must appear to be identical to those used by the Commission in printed copies of the particular form.]

[(C) The text and order of the text must be identical to that used by the Commission in printed copies of the particular form.]

[(D) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.]

(h) [(j)] Contract forms [Forms] approved [or promulgated] by the Commission may be reproduced, including through use of a software application, provided that the text and format of the form, including the sizing, spacing, and pagination, is identical to the Commission's published version, except that [must be reproduced on the same size of

paper used by the Commission with the following changes or additions only]:

(1) the [The] business name or logo of a broker, trade association, or other organization [or printer] may appear [at the top of a form] outside the form's border; and

(2) a form may be scaled to accommodate viewing on smaller screens, including mobile devices, as long as the final executed copy of the form otherwise complies with this subsection [The broker's name may be inserted in any blank provided for that purpose].

[(k) Standard Contract Forms adopted by the Commission are published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188 or www.trec.texas.gov.]

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300728

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3284

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS

SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) proposes amendments to §27.1, concerning Right of Review. These amendments update and clarify language related to current procedures for the personal review of criminal history record information and the required fees.

Suzu Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be publication of the current procedures for the personal review of criminal history record information.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted by email to Tanya.Wilson@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

Texas Government Code, §§411.004(3), 411.083(b)(3), and 411.086 are affected by this proposal.

§27.1. Right of Review.

(a) An individual may access and receive a copy of their Texas criminal history record information maintained by [It is the policy of] the Texas Department of Public Safety (the department) [that a person may access and receive a copy of criminal history record information maintained by the department] that relates to the individual [person] upon payment of a fee as authorized by Texas Government Code, §411.088. In this section, "criminal history record information" means information collected about an individual [a person] by a criminal justice agency using biometric submissions to identify the individual. The collected information includes [that consists of] identifiable descriptions and notations of arrests, detentions, indictments, [informations] and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the individual [person] in the criminal justice system or driving record information maintained by the department

ment under Texas Transportation Code, Chapter 521, Subchapter C. An individual [A person] with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the FBI's Special Correspondence Bureau [at (304) 625-3878] to request a copy of their national criminal history record information to review. Information related to national criminal history record information can be found on the department's website in the Texas personal review instructions.

(b) An individual can schedule a fingerprinting appointment by visiting <https://www.dps.texas.gov/section/crime-records/fingerprinting-services> or by submitting approved fingerprint cards to the department's vendor. Out-of-state applicants may choose to schedule an appointment at the nearest location if available. Information related to submissions can be found on the department's website. [A person may schedule a fingerprinting appointment by visiting www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintingservices.htm.]

(1) [Biographical Data:] Biographical data to further help in the positive identification of the subject being fingerprinted must be provided at the time of the appointment. This data is confidential and may not be released by the department unless authorized.

(2) An individual [Fee. The person] must pay the \$15 Texas criminal history record information fee, and the \$10 fingerprinting fee. The total \$25 fee must be paid via credit card, debit card, business check or money order at the time services are rendered. Personal checks and cash are not accepted. There may be an additional fingerprinting fee if processed at an out-of-state location.

(3) An individual [Identification. A person] must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit <https://www.dps.texas.gov/section/crime-records/fingerprinting-services>. [http://www.tx.dps.state.tx.us/administration/crime_records/docs/ProveldForFingerprinting.pdf.]

(4) An individual may elect to receive personal criminal history record information via e-mail or mail. Results delivered via e-mail will be sent within three business days of successful fingerprinting. Results delivered via mail will be sent to the address on file within ten business days. [Results. Criminal history results will be delivered to the designated address within 7 to 10 business days.]

[(e) A person may appear at 108 Denson Drive, Austin, Texas 78752 during department business hours and request to be fingerprinted to obtain their criminal history record information.]

[(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.]

[(2) Fee. The person must pay the \$25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted.]

[(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.tx.dps.state.tx.us/administration/crime_records/docs/ProveldForFingerprinting.pdf.]

[(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days.]

(c) An individual unable to schedule an appointment at a fingerprinting location or [(d) A person] residing out-of-state [out of state] can submit their fingerprints by completing the forms and

following the instructions for "Fingerprints Submitted By Mail" at www.dps.texas.gov/internetforms/Forms/CR-63.pdf.

(1) ~~[Biographical Data.]~~ Biographical data to further help in the positive identification of the subject being fingerprinted must be provided at the time of fingerprinting. This data is confidential and may not be released by the department unless authorized.

(2) The individual must pay the \$15 Texas criminal history record information fee and the \$10 fingerprinting fee. The total \$25 fee must be paid via credit card or debit card at the time of enrolling the hard cards to be submitted by mail. Personal checks and cash are not accepted. There may be additional fingerprinting fees if hard cards are completed by a law enforcement agency and/or an agency that is trained and certified to roll fingerprints. ~~[Fee. The person must pay the \$25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted.]~~

(3) An individual ~~[Identification. A person]~~ must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit <https://www.dps.texas.gov/section/crime-records/fingerprinting-services>. ~~[http://www.tx.dps.state.tx.us/administration/crime_records/docs/ProvIdForFingerprinting.pdf.]~~

(4) An individual may elect to receive personal criminal history record information via e-mail or mail. Results delivered via e-mail will be sent within three business days of successful fingerprinting. Results delivered via mail will be sent to the address on file within ten business days. Multiple duplicate copies of personal criminal history record information may not be able to be sent by the department. ~~[Results. Criminal history results will be delivered to the designated address within 10 to 14 business days.]~~

(e) A request for review of personal Texas criminal history record information expires 30 calendar days after the date submitted. After 30 calendar days, a new request must be initiated.

(f) ~~[(e)]~~ If an individual ~~[a person]~~ believes criminal history record information maintained by the department is incorrect or incomplete, the individual ~~[person]~~ may visit: <https://www.dps.texas.gov/section/crime-records-service/criminal-history-error-resolution> ~~[www.dps.texas.gov /administration/crime_records/pages/errorresolution.htm]~~ and complete the required forms.

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

Filed with the Office of the Secretary of State on February 17, 2023.

TRD-202300799

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 2, 2023

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



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 461. INCIDENT COMMANDER

37 TAC §§461.1, 461.3, 461.5, 461.7

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 461, Incident Commander, adding §461.7 for International Fire Service Accreditation Congress (IFSAC) Seal.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments and the new rule §461.7 adds IFSAC accreditation seal to Incident Commander.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state government by amending the noted rule sections to enhance firefighter safety.

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be safer working conditions for firefighters serving Texas communities.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the

absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

There is no impact on costs to regulated persons.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§461.1. Incident Commander Certification.

(a) An Incident Commander is defined as an individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources, who has overall authority and responsibility for conducting and managing all incident operations at the incident site.

(b) All individuals holding an Incident Commander certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

§461.3. Minimum Standards for Incident Commander Certification.

In order to be certified as an Incident Commander, an individual must:

(1) provide documentation of completion of the National Incident Management System courses 100, 200, 700, and 800; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Incident Commander; or

(3) complete a commission-approved Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Incident Commander program must consist of one of the following:

(A) completion of an in-state Incident Commander program meeting the requirements of the applicable NFPA standard and conducted by a commission-certified training provider, that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state, educational institution of higher education, and/or military training program that has been

submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

§461.5. Examination Requirement.

Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Incident Commander certification.

§461.7. International Fire Service Accreditation Congress (IFSAC) Seal.

Individuals completing a commission-approved Incident Commander program may be granted an IFSAC seal for Incident Commander by making application to the commission for the IFSAC seal and paying applicable fees. Individuals must submit the fee for the seal prior to the expiration of the examination to qualify for the IFSAC seal.

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

Filed with the Office of the Secretary of State on February 17, 2023.

TRD-202300801

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3841



CHAPTER 467. FIRE MARSHAL

The Texas Commission on Fire Protection (commission) proposes in 37 Texas Administrative Code a new Chapter 467, Fire Marshal, with Subchapter A, §§467.1, 467.3, 467.5; Subchapter B, §467.201; Subchapter C, §467.301; and Subchapter D, §467.401.

BACKGROUND AND PURPOSE

The purpose of the proposed new rules in new Chapter 467, Fire Marshal, outlines the requirements for becoming a certified Fire Marshal in Texas.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed new rules are in effect, there will be no fiscal impact to state government by amending the noted rule sections to enhance firefighter safety.

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that having Fire Marshal certification available for the career fire fighter is beneficial in fire fighter professional development and career progression which is also beneficial to the Texas Fire Service.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed new rules are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these new rules. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the new rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these new rules. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed new rules do not require an environmental impact analysis because the proposed new rules are not a major environmental rule under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed new rules may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to amanda.khan@tcfp.texas.gov.

SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL

37 TAC §§467.1, 467.3, 467.5

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these new rules.

§467.1. Basic Fire Marshal Certification.

(a) A Fire Marshal is defined as an individual designated to provide delivery, management, and/or administration of fire protection- and life safety-related codes and standards, investigations, education, and/or prevention services.

(b) All individuals holding a Fire Marshal certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the commission examination for Basic Fire Marshal by:

(1) holding as a minimum, Instructor I certification through the commission; and

(2) holding as a minimum, Fire Investigator certification through the commission; and

(3) holding as a minimum, Fire Inspector certification through the commission.

(d) All applications for testing during the special temporary provision period must be received no earlier than August 1, 2023, and no later than August 1, 2024.

(e) This subsection will expire on August 30, 2024.

§467.3. Minimum Standards for Basic Fire Marshal Certification.

In order to be certified as a Basic Fire Marshal, an individual must:

(1) hold Basic Fire Inspector certification through the commission; and

(2) hold Basic Fire Investigator or Basic Arson Investigator certification through the commission; and

(3) hold Fire and Life Safety Educator I; and

(4) complete a commission-approved Fire Marshal program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and

(5) completion of a commission approved Fire Marshal Curriculum as specified in Chapter 15 of the commission's Certification Curriculum Manual.

§467.5. Examination Requirement.

(a) Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Basic Fire Marshal certification.

(b) Individuals will be permitted to take the Commission examination for Basic Fire Marshal certification by documenting the following:

(1) Basic Inspector certification and Basic Fire Investigator; and

(2) Basic Arson Investigator certification; and

(3) Fire and Life Safety Educator I through the Commission; or

(4) the equivalent IFSAC seals and completing a Commission-approved Basic Fire Marshal curriculum.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300758

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3841

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**SUBCHAPTER B. MINIMUM STANDARD
FOR INTERMEDIATE FIRE MARSHAL
CERTIFICATION**

37 TAC §467.201

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these new rules.

§467.201. Intermediate Fire Marshal Certification.

Applicants for Intermediate Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite a Basic Fire Marshal certification as defined in §467.3 of this title (relating to Minimum Standards for Basic Fire Marshal Certification); and

(2) hold Intermediate Fire Inspector certification through the commission; and

(3) hold Intermediate Fire Investigator or Intermediate Arson Investigator through the commission; and

(4) hold Fire and Life Safety Educator II certification through the commission; and

(5) acquire a minimum of four years of fire protection experience.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300759

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3841

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**SUBCHAPTER C. MINIMUM STANDARDS
FOR ADVANCED FIRE MARSHAL
CERTIFICATION**

37 TAC §467.301

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these new rules.

§467.301. Advanced Fire Marshal Certification.

Applicants for Advanced Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Marshal certification as defined in §467.5 of this title (relating to Minimum Standards for Intermediate Fire Marshal Certification); and

(2) hold Advanced Fire Inspector certification through the commission; and

(3) hold Advanced Fire Investigator or Advanced Arson Investigator through the commission; and

(4) hold Fire Plans Examiner certification through the commission; and

(5) acquire a minimum of eight years of fire protection experience.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300760

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3841

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**SUBCHAPTER D. MINIMUM STANDARDS
FOR MASTER FIRE MARSHAL CERTIFICATION**

37 TAC §467.401

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these new rules.

§467.401. Master Fire Marshal Certification.

Applicants for Master Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Marshal certification as defined in §467.5 of this title (relating to Minimum Standards for Advanced Fire Marshal Certification); and

(2) hold Master Fire Inspector certification through the commission; and

(3) hold Master Fire Investigator or Master Arson Investigator through the commission; and

(4) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in any combination of Fire Science and/ or Criminal Justice. College level courses from both the upper and lower division may be used to satisfy the education requirements for Master Fire Marshal Certification.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300762

Mike Wisko

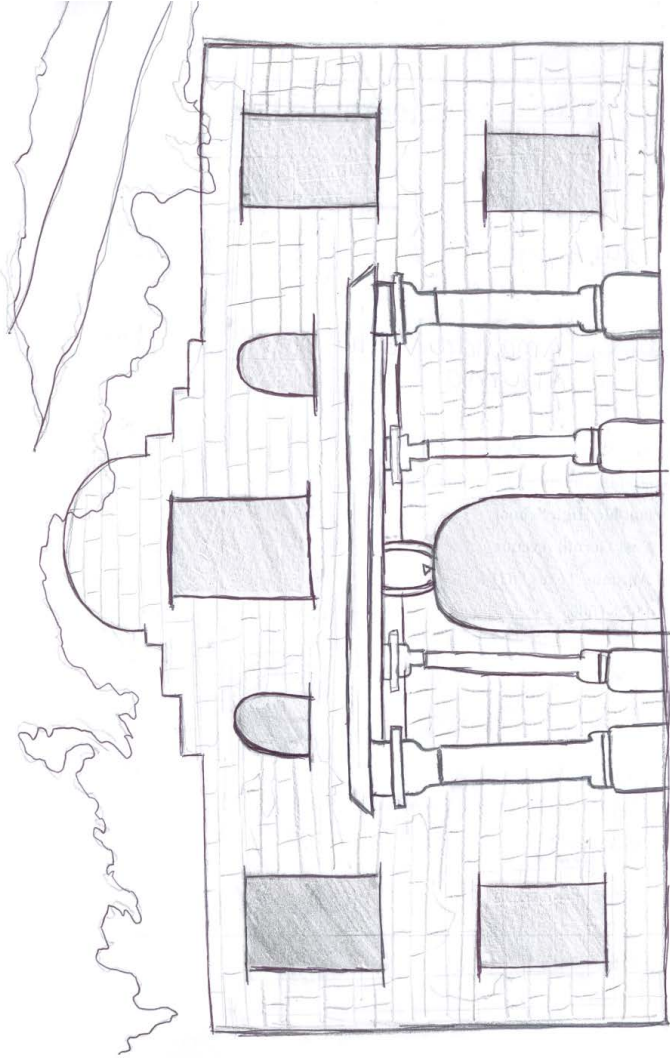
Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: April 2, 2023

For further information, please call: (512) 936-3841





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 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.1, §537.11

The Texas Real Estate Commission withdraws proposed new §537.1 and amendment to §537.11, which appeared in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7854).

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300752

Vanessa E. Burgess

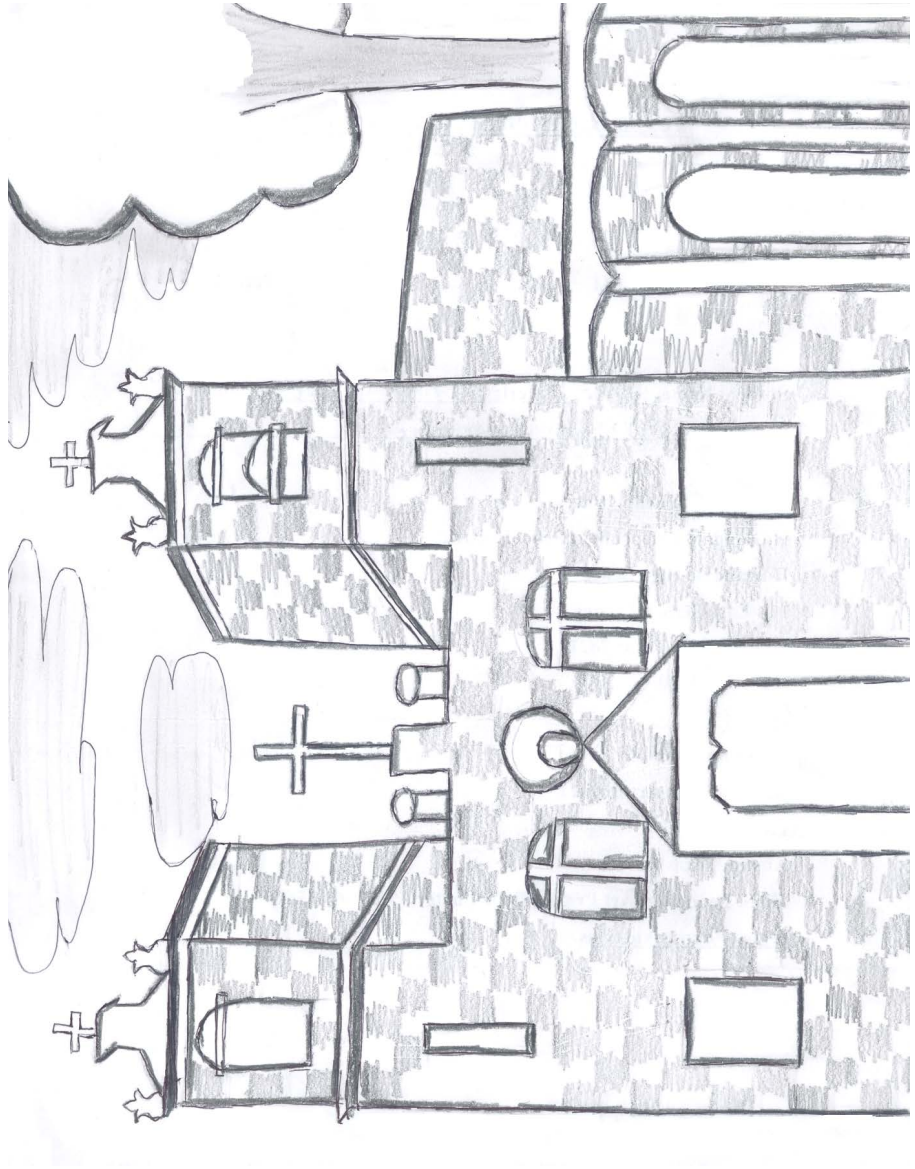
General Counsel

Texas Real Estate Commission

Effective date: February 15, 2023

For further information, please call: (512) 936-3284





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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 211. INFORMATION RESOURCES MANAGERS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 211, concerning Information Resources Managers. 1 Texas Administrative Code §§211.1 - 211.3, 211.10, 211.11, 211.20 - 211.21 are adopted without changes to the proposal as published in the November 11, 2022, edition of the *Texas Register* (47 TexReg 7499) and will not be republished.

The adopted amendments are the result of the department's statutory quadrennial rule review of 1 Texas Administrative Code Chapter 211. The department's formal notice of rule review was published in the November 22, 2019, edition of the *Texas Register* (44 TexReg 7189). The proposed rules were published in the November 11, 2022, edition of the *Texas Register* (47 TexReg 7499).

The adopted rules apply to both state agencies and institutions of higher education.

The department received no comments in response to the proposed amendments published in the *Texas Register*.

Department Description of Adopted Changes

In §211.1, the department adopts the addition of a definition for "executive head" and amendments to existing definitions for "Information Resources Manager" and "Joint Information Resources Manager" to clarify the overall understanding of the terms as used in 1 TAC Chapter 211.

The department adopts the correction of statutory references to be in compliance with legal citation standards in §211.2.

The department further adopts amendments to clarify the definition of "state agency" found in §211.3.

The department adopts amendments to §211.10, for state agencies, and §211.20, for institutions of higher education, that clarify existing language and update the rule to reflect current processes. The amendments allow the executive head, the deputy executive head, or their designee to designate the entity's Information Resources Manager or identify a Joint Information Resources Manager, if applicable. The department also removes extraneous language and adopts updates to the process for how an entity designates their Information Resources Manager with the department and the information included when so designating.

The department adopts amendments to §211.11, for state agencies, and §211.21, for institutions of higher education, that update the initial training and continuing education requirements for Information Resources Managers and the process by which the initial training and continuing education guidelines are established by the department.

Written comments on the adopted rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov.

SUBCHAPTER A. DEFINITIONS

1 TAC §§211.1 - 211.3

The department adopts the amendments to these rules pursuant to its general rulemaking authority found at Texas Government Code § 2054.052.

No other code, article, or statute is affected by this adoption.

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

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Joshua Godbey
General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4531



SUBCHAPTER B. STATE AGENCY INFORMATION RESOURCES MANAGERS

1 TAC §211.10, §211.11

The department adopts the amendments to these rules pursuant to its general rulemaking authority found at Texas Government Code § 2054.052.

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

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INFORMATION RESOURCES MANAGERS

1 TAC §211.20, §211.21

The department adopts the amendments to these rules pursuant to its general rulemaking authority found at Texas Government Code § 2054.052.

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

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CHAPTER 216. PROJECT MANAGEMENT PRACTICES

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 216, concerning Project Management Practices. 1 Texas Administrative Code §§216.1 - 216.3 and §§216.10 - 216.12 are adopted without changes to the proposal as published in the November 11, 2022, edition of the *Texas Register* (47 TexReg 7502). These rules will not be republished.

The adopted amendments are the result of the department's statutory quadrennial rule review of 1 TAC Chapter 216 in addition to incorporating references to guidelines documents made relevant by Senate Bill (SB) 799, 87th Session (Regular). The department's formal notice of rule review was published in the November 22, 2019, edition of the *Texas Register* (44 TexReg 7189). The proposed rules were published in the November 11, 2022, edition of the *Texas Register* (47 TexReg 7502). The adopted amendments apply only to state agencies.

The department received no comments in response to the proposed amendments published in the *Texas Register*.

Department Description of Adopted Changes

The department adopts amendments that correct statutory references found in §216.1 and §216.2 to comply with legal citation standards.

In §216.1, the department adopts a new definition for the term "additional monitoring report" and amended definitions for "project" and "agency head."

The department adopts the clarified definition of "state agency" found in §216.3.

In §216.10, the department adopts clarifying language to require only those state agencies that have identified a project in their current or amended fiscal year biennial operating plan to implement a project management methodology for the agency.

In §216.11, the department adopts updates to the rule for clarity and plain language understanding by separating the currently existing subsection (a) into two distinct subsections and instituting an active requirement for a state agency to include current requirements in its project management practices for information resources projects. The adopted amendments also update additional monitoring requirements to address the department's creation of an additional monitoring matrix that the department and Quality Assurance Team may use to implement any additional oversight services required for specific major information resources projects in compliance with SB 799, 87th Session (Regular) and require state agency compliance with any additional oversight services.

In §216.12, the department adopts amendments to update project management practice standards to reflect current widely accepted industry standards for project management.

Written comments on the adopted rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov.

SUBCHAPTER A. DEFINITIONS

1 TAC §§216.1 - 216.3

The department adopts the amendments to these rules pursuant to its general rulemaking authority found at Texas Government Code § 2054.052 and its specific rulemaking authority granted by Texas Government Code § 2054.118(b), which requires the department to develop rules or guidelines for its review of major information resources projects and project management practices for the projects.

No other code, article, or statute is affected by this adoption.

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

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SUBCHAPTER B. PROJECT MANAGEMENT PRACTICES FOR STATE AGENCIES

1 TAC §§216.10 - 216.12

The department adopts the amendments to these rules pursuant to its general rulemaking authority found at Texas Government Code § 2054.052 and its specific rulemaking authority granted by Texas Government Code § 2054.118(b), which requires the department to develop rules or guidelines for its review of major information resources projects and project management practices for the projects.

No other code, article, or statute is affected by this adoption.

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

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Joshua Godbey

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Department of Information Resources

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, new Subchapter P, Autism Services, Division 1, General Provisions, comprising §354.5001, concerning Purpose and Applicability; §354.5003, concerning Definitions; §354.5011, concerning Providers of Applied Behavior Analysis (ABA) Services; §354.5021, concerning Service Description, Requirements, and Limitations for Providing Applied Behavior Analysis (ABA) Services; and §354.5023, concerning Additional Medicaid Reimbursement Limitations and Exclusions Specific to Applied Behavior Analysis (ABA) Services.

Section 354.5021 and §354.5023 are adopted with changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6937). These rules will be republished.

Sections 354.5001, 354.5003, and 354.5011 are adopted without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6937). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rules implement the legislative direction in Senate Bill 1, 87th Texas Legislature, Regular Session, 2021 (Article II, HHSC, Rider 28). Rider 28 appropriated funding for Applied Behavior Analysis (ABA) services for autism and directed HHSC to implement the services as soon as practicable, but not later than February 1, 2022. A proposed Medicaid state plan amendment (SPA) was submitted to the Centers for Medicare & Medicaid

Services (CMS) on September 3, 2021. The SPA amended the state plan to clarify that, to the extent required by Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide ABA evaluation and treatment services to eligible children under 21 years of age who have a diagnosis of autism spectrum disorder (ASD). On January 27, 2022, CMS approved the SPA with an effective date of February 1, 2022.

The adoption of new Subchapter P in Title 1, Part 15, Chapter 354 outlines the requirements for LBAs and other providers of Medicaid ABA services, with a focus on how services should be provided. The adopted rules are consistent with the Medicaid Autism Services section (Austin Section) in the Children's Services Handbook (Children's Handbook) in the Texas Medicaid Provider Procedures Manual (TMPPM) that went into effect on February 1, 2022.

COMMENTS

The 31-day comment period ended November 21, 2022. During this period, HHSC received comments regarding the proposed rules from three commenters, including Autism Speaks (AS), Texas Association for Behavior Analysis Public Policy Group (Tx-ABA-PPG), and Texas Council of Community Centers (TCCC). A summary of comments relating to the rules and HHSC responses follows.

Comment: Multiple commenters suggested including telehealth services and allowing providers flexibility in offering telehealth services.

Response: HHSC declines to include specific telehealth service delivery in the rules at this time. HHSC includes telehealth service delivery by Licensed Behavior Analysts (LBAs) in the Texas Medicaid Provider Procedures Manual (TMPPM), Children's Handbook under the Autism Section.

Comment: Multiple commenters requested a definition or clarification of "clinically appropriate."

Response: HHSC declines to define "clinically appropriate" in rule because clinical appropriateness is specific to a person receiving services. The TMPPM lists documentation criteria to support the clinical appropriateness of the service requested. Professional standards of care and safety will also support clinical appropriateness.

Comment: Multiple commenters recommended removing "behavior difficulties" in proposed §354.5021(a)(2)(A) to focus solely on treating the core symptoms of ASD. Commenters stated amending the rule in this manner would be consistent with the EPSDT benefit requirements.

Response: In response to this comment, HHSC declines to strike "behavior difficulties" from §354.5021(a)(2)(A) as this section describes the parameters of the service covered by Texas Medicaid. Further, Texas Medicaid provides medically necessary ABA and other services for children or youth ages 0-20 years old in compliance with EPSDT. However, HHSC revised the rule for clarification by dividing the subparagraph into §354.5021(a)(2)(A)(i) and §354.5021(a)(2)(A)(ii) and including the phrase "core symptoms of ASD."

Comment: One commenter commended HHSC for the inclusion of ABA services in the Medicaid state plan, Texas Human Resources Code, and Texas Government Code.

Response: HHSC thanks the commenter for their support and feedback.

Comment: One commenter recommended §354.5003(21) be revised to state that the LBA may determine when telehealth services are clinically appropriate. The commenter stated that §354.5003(21) does not align with the TMPPM's description of service delivery of telehealth for LBAs. The commenter also included language regarding telehealth service delivery from the TMPPM for reference for the requested revision of the rule.

Response: HHSC disagrees with the commenter and declines to revise §354.5003(21). The definition of "in-person" in §354.5003(21) sets forth what this term means when used in new Subchapter P of Chapter 354. The definition does not speak to limitations or guidelines for ABA telehealth service delivery. HHSC agrees that the current version of the TMPPM outlines service delivery limitations and guidelines of telehealth for LBAs.

Comment: One commenter stated that the definition of legally authorized representative (LAR) in proposed §354.5003(23) does not align with other references to the LAR within the proposed rules.

Response: HHSC revised rule paragraphs §354.5023(a)(10) and (a)(11) to remove parenthetical phrases to align with the LAR definition in §354.5003(23).

Comment: Multiple commenters requested clarification or a definition of "trauma-informed care." One commenter asked about assessing competency in trauma-informed care. Commenters also requested Texas mandate and provide trauma-informed care training.

Response: "Trauma-informed" is defined in §354.5003(48). HHSC declines to mandate in the rule trauma-informed training or provider competency in trauma-informed care. Providers may choose training on trauma-informed care, which may be required to adhere to their licensure and ethical requirements.

Comment: Multiple commenters acknowledged that utilizing the current Diagnostic and Statistical Manual of Mental Disorders (DSM) symptomology and severity level is considered best practice but expressed concern that many diagnosing providers use alternate terminology such as mild, moderate, or severe. One commenter requested removing the requirement that the diagnosis of ASD must include the current DSM symptom severity levels because it is administratively burdensome.

Response: Evaluation and re-evaluation using diagnostic criteria and symptom severity level support determinations of medical necessity and clinical appropriateness for services. The current DSM criteria also help to guide authorizations for frequency, scope, and duration for ABA services. Therefore, HHSC declines to make changes in response to this comment.

Comment: One commenter requested that HHSC revise §354.5021(a)(1)(A) and section 6 of the Autism Services Policy for a phasing in of the severity level requirement and to align the use of symptom severity levels for each of the two psychopathological domains per the current DSM.

Response: HHSC declines to revise §354.5021(a)(1)(A). Evaluation and re-evaluation using diagnostic criteria and symptom severity level support determinations of the medical necessity and clinical appropriateness for services. The current DSM criteria also help guide authorizations for frequency, scope, and duration for ABA services. HHSC declines to revise the Autism

Services Policy as requested because doing so is out of scope for this rule project.

Comment: Multiple commenters recommended state agencies use a uniform definition of ASD based primarily on the current version of the DSM.

Response: HHSC declines to revise the rules in response to this comment. HHSC does not have authority over other state agency rules. The definition of ASD in §354.5003(3) refers to and aligns with the definition of ASD in the current version of the DSM without using the language verbatim. The specific language in the DSM is copyrighted.

Comment: Multiple commenters expressed concerns with and questioned the necessity of a reconfirmation every three years of a diagnosis of ASD. One commenter stated that the requirement conflicts with the Mental Health Parity and Addiction Equity Act (MHPAEA) and should be eliminated.

Response: HHSC declines to revise the rules in response to this comment. Appropriate re-evaluation of diagnosis, including clinical severity of ASD symptoms at the three-year mark, is clinically appropriate to determine and document medical necessity of services. It is recognized in the clinical literature that a child or youth's diagnostic information can change over time.

Additionally, the requirement does not conflict with the MHPAEA. Because ASD is a neurodevelopmental condition, the state has not categorized ASD as a mental health condition. This diagnosis, along with dementias, disorders due to brain injury, and others, are included in the medical/surgical package as they are not psychiatric in nature.

Comment: One commenter noted that §354.5021(a)(3)(A)(i) does not reflect the process described in the TMPPM in which the rendering provider rather than the ordering, referring, or prescribing physician (ORP) submits the order, referral, or prescription.

Response: In response to the comment, HHSC revised §354.5021(a)(3)(A)(i) to remove mention of the ORP in reference to the order, referral, or prescription for ABA evaluation or treatment services.

Comment: Multiple commenters requested that the rules define or clarify "developmental relationship-based approach" used in proposed §354.5021(b)(1)(G).

Response: HHSC revised §354.5021(b)(1)(G) to remove "including parent-implemented models that use a developmental relationship-based approach" to clarify that "other evidence-based forms of behavioral therapy" are not limited to this type of approach.

Comment: One commenter requested that HHSC revise §354.5023(a)(1) to state that "an ABA provider may participate and bill for reimbursement in another Medicaid program as long as all rules are followed per that Medicaid program."

Response: HHSC declines to revise the rule as requested because other Medicaid program services an ABA provider may provide or bill for are out of scope for this rule project. This rule is applicable to Medicaid state plan medical services only.

Comment: One commenter stated that while it is appropriate to limit Medicaid reimbursement to evidence-based standards of care for ABA and prohibit experimental and investigational treatment methods for ASD in §354.5023, the absence of references to appropriate standards for ASD treatment and ABA services is

likely to be confusing. Another commenter requested further definition and clarification of "experimental" and "investigational."

Response: HHSC declines to amend the rule as it is not appropriate for HHSC to define specific standards of care or professional guidelines. Even if HHSC referenced existing outside standards of care or professional guidelines, such standards or guidelines evolve over time. HHSC also declines to define "experimental" or "investigational" in the rule but clarifies that services considered "experimental" and "investigational" are not reimbursable. Reimbursement for experimental or investigational treatment methods is prohibited generally across all Texas Medicaid services. Experimental and investigational interventions are not yet broadly accepted clinical practices, and Texas Medicaid requires all services to align with generally accepted standards of care. That procedures and services considered experimental or investigational are not a benefit of Texas Medicaid is also stated in the TMPPM, Volume 1, Provider Enrollment and Responsibilities, Section 1.11.

Comment: Multiple commenters requested clarification of the exclusion in §354.5023(a)(12) of "Behavior Technicians in the school setting as a shadow or an aide or to provide general support to the child."

Response: HHSC clarifies that this exclusion is not a blanket prohibition of ABA services in the school setting. This rule does not prohibit delivery of medically necessary and clinically appropriate services in the school. Rather, it prohibits reimbursement of services by a behavior technician "as a shadow or an aide or to provide general support."

Comment: In the context of commenting on §354.5021(a)(3)(F), the commenter expressed concerns about the guidelines in the TMPPM for participation by an LAR, a parent, or a caregiver in education and training sessions. The commenter also expressed concerns regarding the comparisons between benefit descriptions in the TMPPM. The commenter strongly encouraged the state to modify this policy to align with medical services such as those established for other rehabilitative therapies.

Response: HHSC declines to make any changes in this rule because the comments are about the requirements in the TMPPM. The specific policy requirements in the TMPPM are out of scope for this rule project. Comments on the TMPPM may be directed to MedicaidBenefitRequest@hhsc.state.tx.us.

Comment: One commenter requested clarification of §354.5021(a)(3)(A)(vii) regarding interpreter or translation services to specify that Medicaid managed care organizations (MCOs) are responsible for the provision of translation and interpretation services.

Response: HHSC declines to revise the rule as requested as it is out of scope for this rule project. However, HHSC clarifies that MCOs are responsible for providing interpretation services for their clients in accordance with 1 Texas Administrative Code (TAC) §354.1002; the HHSC Uniform Managed Care Manual, Sections 8.1.5.8, Cultural Competency, and 16.1.5.1, Cultural Competency Plan; and the Medicaid Managed Care Handbook of the TMPPM, Volume 2, Section 2.5, Cultural Competency and Sensitivity.

SUBCHAPTER P. AUTISM SERVICES

DIVISION 1. GENERAL PROVISIONS

1 TAC §354.5001, §354.5003

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance program in Texas.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 438-4651



DIVISION 2. SERVICE PROVIDERS

1 TAC §354.5011

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance program in Texas.

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

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DIVISION 3. PARAMETERS FOR SERVICE PROVISION

1 TAC §354.5021, §354.5023

STATUTORY AUTHORITY

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

Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance program in Texas.

§354.5021. *Service Description, Requirements, and Limitations for Providing Applied Behavior Analysis (ABA) Services.*

(a) This subsection describes ABA services and Requirements for providing ABA services.

(1) ABA services under this subchapter may be available only when the documentation of the diagnosis of ASD, or re-evaluation of the diagnosis:

(A) identifies current ASD symptoms and symptom severity level using the DSM, as determined by a qualified medical or health care professional under the Autism Section of the TMPPM, including a member of an interdisciplinary diagnostic team who is authorized by licensure to use the DSM;

(B) includes data from use and interpretation of an additional ASD diagnostic tool or tools, as clinically and age appropriate, as determined by a qualified medical or health care professional under the Autism Section of the TMPPM, including a member of an interdisciplinary diagnostic team who is authorized by licensure to use the ASD diagnostic tool or tools;

(C) includes a determination that the diagnosis of ASD is clinically appropriate, made by a qualified medical or health care professional, or a PCP or other physician working in collaboration with an authorized interdisciplinary diagnostic team under this subchapter and the Autism Section of the TMPPM, and confirms that the analysis of all elements of a comprehensive diagnostic evaluation at a minimum is the basis for the determination;

(D) is current (within three years of the request for ABA services) to provide timely age- and developmentally-appropriate information;

(E) includes all additional required items for the documentation of the diagnosis in the Autism Section in the TMPPM; and

(F) may facilitate delivery of holistic health care services for the child.

(2) The ABA services of the LBA and the supervised LaBA or BT must:

(A) focus on:

(i) treating behavior difficulties related to the core symptoms of ASD; and

(ii) shaping behavior patterns through environmental adaptations and consistent reinforcement and consequences across the child's natural settings and situations;

(B) effect meaningful behavior change related to the core symptoms of ASD (to be meaningful, the behavior change must be durable and generalizable, in socially significant behaviors, which affect health, safety, or independence, in everyday settings); and

(C) maintain behavior change and prevent regression as medically necessary.

(3) ABA evaluation, treatment, and supervision service planning, design, and delivery must:

(A) be:

(i) based on authorized ABA services, per the order, referral, or prescription for ABA evaluation or treatment services;

(ii) person-centered;

(iii) family-centered;

(iv) evidence-based;

(v) trauma informed;

(vi) informed by co-morbid conditions of the child and their intersection with ABA services, understanding that co-morbid conditions may mimic or exacerbate ASD symptoms;

(vii) provided in the primary language of the child, or those who are closest to the child, as applicable, when required for effective communication and service delivery;

(viii) in compliance with all applicable law or rule and additional requirements for Medicaid reimbursable ABA services, including when these requirements are more restrictive than state scope of practice or licensing requirements for LBAs and LaBAs, or certification or registration entity requirements for BTs, as applicable; and

(ix) ethical;

(B) use functional goals, for meaningful behavior change, that are specific, measurable, and realistically attainable;

(C) involve the LBA routinely assessing progress in implementing the ABA treatment plan and achieving goals, based on measurable treatment data, and amending the treatment plan, as appropriate;

(D) involve the LBA routinely assessing and amending the formal ABA supervision documentation, as appropriate, including specifying:

(i) the available LaBA or BT who may provide supervised ABA services under the treatment plan;

(ii) the ABA services delegated to the supervised LaBA or BT; and

(iii) the current supervisory instructions for the LaBA or BT based on the initial or modified treatment plan, to ensure provision and facilitation of clinically appropriate and effective ABA services by the LaBA or BT;

(E) only allow an LaBA or a BT to provide in-person ABA services; and

(F) include participation by the LAR, parent, or caregiver, as applicable, in parent or caregiver education and training sessions, in a frequency and duration agreed to by the LAR, parent, or caregiver. The LAR, parent, or caregiver determines the appropriateness and what is realistic for the individual circumstances, unless an exception from participation in parent or caregiver education and training services is made in the service authorization process, conforming to the Autism Section in the TMPPM, where:

(i) the treatment plan for ABA services must contain goals specific to LAR, parent, or caregiver education and training unless exempted, and the progress towards the goals for LAR, parent, or caregiver education and training must be considered when evaluating ABA services; and

(ii) it is expected that the participation of the LAR, parent, or caregiver in education and training sessions may result in their delivery of the ABA services outside of Medicaid reimbursable ABA service delivery sessions and contribute to durability and generalizability of meaningful behavior change.

(b) Medicaid medically necessary ABA services for ASD are one of a comprehensive array of potentially available Medicaid medically necessary services and treatment methodologies for children with ASD.

(1) Other potential medically necessary services or covered treatment methodologies for ASD may include:

- (A) nutrition services provided by an LD;
- (B) outpatient behavioral health services, including a history of trauma related to ASD;
- (C) physician services, including medication management;
- (D) speech-language pathology or ST services;
- (E) OT services;
- (F) PT services;
- (G) other evidence-based forms of behavioral therapy;
- (H) service coordination or service management services; and
- (I) any other medically necessary services or treatment methodologies which meet Medicaid requirements to treat ASD.

(2) Use of ABA services in no way precludes the child from participating in other medically necessary services, treatments, and interventions for ASD.

(c) When providing ABA services to a child, a provider of ABA services must not:

- (1) cause harm to or be exploitative of the child, or to those who are closest to the child, as applicable;
- (2) include the use of aversive interventions, including the use of pain, discomfort, social humiliation, or seclusion; or
- (3) involve use of physical restraints, except to the extent described in the Autism Section in the TMPPM.

(d) LBAs and LaBAs may allow a BT to be referred to as a behavior technician (BT), a Registered Behavior Technician (RBT), a Board Certified Autism Technician (BCAT), an Applied Behavior Analysis Technician (ABAT), or a similar term but must prohibit the BT from:

- (1) using a title, being called or referred to as, or referring to oneself as a "therapist" in interactions with:
 - (A) the child;
 - (B) those who are closest to the child; and
 - (C) other professionals who serve the child who provide any service other than ABA; and

(2) conducting any part of the initial evaluation; creating or amending any part of the treatment plan; and interpreting the treatment plan to any of the individuals as detailed in this paragraph.

§354.5023. Additional Medicaid Reimbursement Limitations and Exclusions Specific to Applied Behavior Analysis (ABA) Services.

(a) Texas Medicaid will not reimburse ABA services when ABA services:

- (1) address academic goals;
- (2) address goals only related to performative social norms that do not significantly impact health, safety, or independence;
- (3) are not expected to result in improvements in the child's level of functioning, other than medically necessary services at the maintenance or consultative level;
- (4) do not require the specific skills and judgment of an LBA to perform or supervise;

(5) do not meet evidence-based standards of practice for ABA for effective treatment of ASD;

(6) use any experimental or investigational treatment methods even with legally effective consent;

(7) are not generally accepted as clinically effective or appropriate, or not within the normal course and duration of treatment for medically necessary ABA services;

(8) are for the convenience of those who are closest to the child or the provider (e.g., as respite care, or limiting treatment to a setting chosen by provider for convenience);

(9) do not include the child age- and developmentally-appropriately engaging in a clinical ABA therapeutic relationship;

(10) are provided by a clinic or agency owned or partially owned by the child (if the child is legally authorized to represent his/herself) or the child's LAR;

(11) are provided directly by the child's LAR;

(12) are delivered by a BT in the school setting as a shadow or an aide or to provide general support to the child; and

(13) include separate billing for:

(A) indirect ABA service time related to ABA treatment; parent or caregiver education and training; ABA-related interdisciplinary team meetings; or supervision of an LaBA or BT; for example, pre- and post-work for a session are not reimbursed separately, other than the pre- and post-work that is allowable for ABA evaluation services; or

(B) any indirect supervision, or direct supervision which does not otherwise meet all requirements in this subchapter, the Autism Section of the TMPPM, and the relevant Current Procedural Terminology code.

(b) Medicaid enrolled LBAs, as individual or performing providers, and ABA groups will not be reimbursed for:

(1) equipment and supplies used during ABA services as they are considered part of the Medicaid services provided;

(2) the services of more than one ABA provider (LBA, LaBA, or BT) during one ABA session with a child, when more than one ABA provider is present (concurrent billing);

(3) concurrent billing for ABA services except where the LAR, parent, or caregiver and the child are receiving separate services, specifically when the LAR, the parent, or caregiver, as appropriate, participates in parent or caregiver education and training, and the child participates in any ABA service for the child in the treatment plan where the child is not present in the parent or caregiver education and training session; or

(4) services billed that do not meet minimum requirements, exceed the limitations outlined in relevant law, rule, and other requirements under this subchapter, the Autism Section in the TMPPM, and the NCCI, or are excluded.

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

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 7 (Pesticides), Subchapter A (General), §7.1; Subchapter B (Registration), §§7.10, 7.12, and 7.14; Subchapter C (Licensing), §§7.20, 7.22 - 7.26; Subchapter D (Use and Application), §§7.30 - 7.33, 7.36, 7.37, 7.39, and 7.40; Subchapter E (Regulated Herbicides), §§7.50 - 7.53; Subchapter F (Enforcement), §7.60; and Subchapter G (Penalties) §§7.70 and 7.71. The amendments are adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8832) and will not be republished.

The amendments to §7.21 are adopted with changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8832) and will be republished. The changes are made to correct terminology by changing "subsection" to "section" in §7.21(b)(1). These changes result in no change to the nature or scope of the proposed text of the rule, affect no new individuals, and impose no additional requirements for compliance.

With the exception of amendments to §7.53, the Department identified the need for the amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the December 30, 2022, issue of the *Texas Register* (47 TexReg 9039).

The amendments to §7.1 update a reference to Chapter 76 of the Texas Agriculture Code (Code), remove unnecessary and outdated definitions for the "Federal Aviation Administration" and "nurseryman," add definitions for "livestock" and "worker protection standard" due to their frequency throughout this chapter, and revise unclear language for the definition of "purchase."

The amendments to §7.10 update a reference to Chapter 76, Subchapter C of the Code and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.12 update a reference to Chapter 76, Subchapter D of the Code.

The amendments to §7.14 correct a reference to an experimental use permit number and remove a subsection outlining registration fees for pesticides having experimental use permits because such fees are no longer applicable to these pesticides.

The amendments to §7.20 clarify language outlining licensing time periods and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.21 modify references to restricted-use and state-limited-use pesticides to conform with references in

Chapter 76 of the Code; replace references to Code, Chapter 76 with "the Act", the Environmental Protection Agency with "EPA", and Texas A&M AgriLife Extension with "Extension" as defined in §7.1; revise all references to the vertebrate pest control and soil fumigation categories to "vertebrate pest" and "soil fumigation" for consistency with the categories established in the rule; correct a reference to the Americans with Disabilities Act, as amended; and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.23 replace a reference to Code, Chapter 76 with "the Act" as defined in §7.1 and remove unnecessary language.

The amendments to §7.24 make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.25 change a reference to the Environmental Protection Agency to "EPA" as defined in §7.1 and make a grammatical change to improve the rule's readability.

The amendments to §7.26 change a reference to the Environmental Protection Agency to "EPA" as defined in §7.1 and updated a reference to the United States Code.

The amendments to §7.30 revise references to "state-limited-use" to conform with references in Chapter 76 of the Code; replace a reference to Code, Chapter 76 with "the Act" as defined in §7.1; combine nearly-identical requirements for purchasing and using state-limited-use pesticides into one subparagraph, add a reference to §7.21 to clarify the rule's content; update references to the Department to conform with usage throughout Title 4, Part 1; remove unnecessary language about the definition of "public health control;" and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.31 replace references to Code, Chapter 76 with "the Act" as defined in §7.1 and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.32 make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.33 update a reference to §7.31 and make a grammatical change to improve the rule's readability.

The amendments to §7.36 add a reference to the federal Worker Protection Standard (WPS) to specify the type of training requirements addressed in this rule and update requirements for those who conduct WPS training to reflect the Department's current policy of maintaining class rosters for WPS training verification purposes.

The amendments to §7.37 add a reference to §7.36 to clarify the rule's content, clarify pesticide application requirements by including a specific timeframe, remove redundant and unnecessary language, and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.39 remove unnecessary language, update references to rules in this chapter, and make grammatical and editorial changes to language to improve the rule's readability.

The amendments to §7.40 make supervision requirements pertaining to the use of M-44 sodium cyanide devices by noncertified applicators the same for commercial and noncommercial applicators, update a reference to Chapter 76, Subchapter D of the Code, remove unnecessary language, and make grammati-

cal and editorial changes to language to improve the rule's readability.

The amendments to §7.50 update an exemption for applications of regulated herbicides requiring a permit by those licensed in the Weed Control category by the Texas Structural Pest Control Service.

The amendments to §7.51 replaces a reference to Code, Chapter 76 with "the Act" as defined in §7.1.

The amendment to §7.52 makes a grammatical change to improve the rule's readability.

The amendments to §7.53 change the regulated area of Brazos County pertaining to the application of regulated herbicide in response to a request from Brazos County to revise this area. This request followed an amendment passed by the Brazos County Commissioner's Court to change this area, which was then forwarded to the Department as a request in November 2021.

The amendments to §7.60 update language to encompass all individuals, including business entities, regulated under Chapter 76 of the Code and this chapter and make grammatical changes to improve the rule's readability.

The amendment to §7.70 updates a reference to Chapter 76, Subchapter D of the Code.

The amendments to §7.71 designate the first and last paragraphs of the rule as subsections (a) and (b) in order to distinguish between labeling violations and other violations, modifies a reference to special local need registration for consistency with usage in Chapter 76 of the Code, and make grammatical changes to improve the rule's readability.

Additionally, throughout this chapter, amendments to correct internal references are adopted to clarify and enhance the readability of this chapter.

The Department received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL

4 TAC §7.1

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code, which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code.

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

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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



SUBCHAPTER B. REGISTRATION

4 TAC §§7.10, 7.12, 7.14

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.043, which requires the Department to adopt a system through which pesticide registrations expire on dates other than the second anniversaries of their approvals or renewals; and Section 76.047 of the Code, which allows the Department to issue experimental use permits for pesticides, to supervise the use of pesticides under these permits, and to charge fees for issuing these permits.

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

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SUBCHAPTER C. LICENSING

4 TAC §§7.20 - 7.26

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.072 of the Code, which allows the Department to adopt rules to create a system under which dealer licenses expire on certain dates; Section 76.101 of the Code, which requires the Department to submit a state plan for the licensing of pesticide applicators to the administrator of the EPA; Section 76.102 of the Code, which requires the Department to license pesticide applicators involved in agricultural pest control; Section 76.108 of the Code, which requires the Department to create rules related to commercial applicator licensure; Section 76.109 of the Code, which requires the Department to create rules related to noncommercial applicator licensure; Section 76.111 of the Code, which allows the Department to determine the type of proof of financial responsibility required of applicator businesses; Section 76.112 of the Code, which requires the Department to create rules related to private applicator licensure; Section 76.113 of the Code, which requires the Department to set applicator licensure periods; Section 55.0041 of the Texas Occupations Code, which requires the Department to issue a license to a military spouse who is licensed in good standing by another jurisdiction that has substantially equivalent licensing requirements to those of the Department; and Section 55.007 of the Texas Occupations Code, which requires the Department to credit verified military service, training, or education by military service members or military veterans toward licensing requirements.

§7.21. *Applicator Certification.*

(a) Certification of Applicators. The department may certify pesticide applicator licensees and applicants for a license in the following license use categories and subcategories. An individual who

is certified in a particular category is authorized to purchase, apply, or supervise the use of restricted-use pesticides, state-limited-use pesticides, or regulated herbicides described by that category subject to department orders, the Act, and federal law.

(1) Agricultural pest control: pesticide applications made to agricultural land as specified in the following subcategories:

(A) field crop: to control insects, diseases, weeds, or other pests of field crops, or the use of harvest aid pesticides in the production of field crops such as cotton, grains, oilseed crops, crops grown for seed, or crops harvested for animal feed (hay) or forage. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);

(B) fruit, nut, and vegetable: to control insects, diseases, weeds, or other pests, or the use of harvest aid pesticides, in the production of non-citrus fruit (category 1G Citrus Pest Control), nut and vegetable crops. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);

(C) pasture and rangeland: to control insects, diseases, weeds, or other pests of field crops, agricultural pastures, rangeland, or adjacent riparian or natural areas, and may include applications to pasture or rangeland vegetation that is harvested for animal feed (hay). This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);

(D) vertebrate pest: to control vertebrate pests affecting agricultural production of field, fruit, nut or vegetable crops, in turf, pastures, rangeland, riparian or natural areas, rights of ways, parks, or crops/vegetation to be harvested for animal feed. This category does not include pesticide applications covered in category 1H (livestock protection collar) or category 1I (M-44 device). Certification in this category requires prequalification as determined by the department;

(E) farm commodity pest control: to apply pesticides (including commodity fumigants) to stored raw agricultural commodities on the farm, in a public or private confined storage facility or container, in an open storage platform or vehicle, or to agricultural equipment used to transport raw agricultural commodities to control pests of a stored agricultural product or a pest subject to a state or federal quarantine requirement;

(F) animal health: to control external parasites or pests of agricultural animals including applications of pesticides to, in, or on any area, facility, or vehicle used for the housing, maintenance, or transportation of an agricultural animal;

(G) citrus: to control insects, diseases, weeds, or other pests in the production of citrus plants or citrus fruit. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);

(H) livestock protection collar: for the use of a livestock protection collar containing sodium fluoroacetate (Compound 1080) for predator control in the protection of livestock. Specialized training provided by the department is a prerequisite for this category;

(I) M-44 device: for the use of a M-44 device for the control of wild or feral canids in the protection of livestock. Specialized training provided by the department is a prerequisite for this category;

(2) Forest pest control: to apply pesticides in forests, forest nurseries, and forest seed production;

(3) Lawn and ornamental plant pest control; and

(A) landscape maintenance: to control pests in the establishment or maintenance of lawns or ornamental plants grown for

function or aesthetic purposes in landscapes, such as athletic fields, residential properties, industrial sites, golf courses, parks, and cemeteries. This category does not include the pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation); and

(B) nursery plant production: to control pests in the production of ornamental plants or other nursery stock and commercial turf. This category includes plants in field production, greenhouses, shade houses, or similar structures. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);

(4) Seed treatment: to control pests by treating seed prior to distribution or planting. This category is not required for planter box applications if the applicator is certified in the appropriate agricultural category or is a private applicator;

(5) Vegetation management: to control unwanted plant growth in rights-of-way, in the maintenance of roads, parking lots, utility lines, wind generator sites, pipelines, railways, airports, public surface drainways and ditches, industrial sites including oil field sites, and adjacent riparian or natural areas and includes public sewer root control;

(6) Aquatic: to control aquatic weeds or other aquatic pests including aquatic animals, microbes, or other pests and may include pesticide applications to adjacent riparian or natural areas when water is present. The category does not include applications covered in category 12 (public health pest control (vector control));

(7) Demonstration and research: for demonstration or research purposes when using restricted-use pesticides, numbered compounds, any pesticide not registered by the EPA (unless exempt from registration under FIFRA Section 25(b)), or any pesticide used in a manner inconsistent with the label directions;

(8) Regulatory pest control: for applications of pesticides when implementing a regulatory program such as a plant pest quarantine, invasive weed control, or other regulated activity conducted by a state, federal or other political subdivision. This category does not include pesticide applications covered in category 12 (public health pest control (vector control));

(9) Aerial application: The use of a pesticide applied by aircraft to any crop or site. In addition to certification in this category, certification in one or more of the appropriate use categories is required;

(10) Category unassigned;

(11) Soil fumigation: to apply fumigant pesticides to soil environments. This category is available for all pesticide license types and meets the pesticide product label requirement for EPA approved soil fumigant training. Private applicators may apply soil fumigant pesticides without adding this category, however additional EPA-approved training stipulated on the use directions of a soil fumigant pesticide label must be met;

(12) Public health pest control (vector control): for pesticide applications made for the purpose of treating, repelling, mitigating, or otherwise controlling any non-human organism that is, or may be, a vector of human disease by a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district, or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district, or other political subdivision; and

(13) Border mosquito control: for pesticide applications made for the limited purpose of vector mosquito control only in a

county located along the international border with Mexico by an applicator who is an employee of a federal, state, county, city, mosquito or vector control district, or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of a federal, state, county, city, mosquito or vector control district, or other political subdivision. An applicator who is licensed in this category shall have the license expire immediately upon separation of employment if a passing score in another category is not achieved prior to the date of separation of employment from the political subdivision. This excludes employees transferring from one political subdivision to another in a county along the international border with Mexico.

(b) Private Applicators.

(1) Producers of agricultural commodities who complete an Extension or other department-approved training program for private applicators and obtain a passing score on the private applicator test may be certified in each of the categories and subcategories listed in subsection (a)(1)(A) - (G), (2), (3), (4), and (6) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will be charged an exam administration fee of \$64 for initial testing or retesting. The fee will not be in excess of expenses directly related to recovery of costs for administration of examinations.

(2) The department may allow an entity other than Extension to conduct private applicator certification training if the training program:

(A) has significant educational or practical content to maintain appropriate levels of competency;

(B) consists of at least three hours of net instruction time;

(C) complies with all applicable federal and state laws including the Americans with Disabilities Act (ADA) requirements for access to training programs; and

(D) is submitted to the department for review and prior approval.

(3) An approved training program may include lectures, panel discussions, organized video or film with live instruction, or other forms of instruction approved by the department.

(4) Private applicator certification training program content must include, but is not limited to:

(A) recognition of common pests to be controlled and the damage caused by them;

(B) reading and understanding laws and regulations and label and labeling information, including the common name of the pesticide to be applied, pest to be controlled, application timing and methods, safety precautions, pre-harvest or reentry provisions, and any specific disposal procedures;

(C) application of pesticides in accordance with label instructions and warnings, including the ability to prepare the proper pesticide concentration to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period;

(D) recognition of local environmental situations that must be considered during application to avoid contamination;

(E) recognition of poisoning symptoms and procedures to be followed in case of a pesticide related accident; and

(F) recognition and identification of Integrated Pest Management (IPM) strategies applicable to the agricultural operation.

(5) The department may deny, revoke, or refuse to renew approval for any private applicator training program or sponsor if the sponsor fails to:

(A) provide to the department records of training on request;

(B) provide the quality of approved training; or

(C) comply with any other requirements that are a basis for approval.

(6) The department may request prior notification of any scheduled training programs to be offered by the sponsor.

(7) Each training program must be approved by the department. No unapproved activity may be claimed to be approved or described in a way that would lead a person to believe that it has been approved.

(8) Each training program shall be approved for one calendar year.

(9) Department personnel may monitor all approved private applicator training programs. All fees charged to trainees shall be waived for them.

(10) Upon completion of private applicator training, the sponsor shall direct trainees to the department for testing.

(11) To receive approval for a private applicator training course, the sponsor must:

(A) submit an application on a form prescribed by the department ;

(B) provide any additional information related to the proposed course requested by the department; and

(C) submit the application and all requested and required information at least 30 days prior to the date the proposed course is intended to be initially held. The department may waive this requirement if the sponsor meets all other requirements. Within ten days of receipt of the application, the department will notify the sponsor if the proposed course has been accepted or rejected or will request additional information.

(12) A sponsor who wishes to continue a course's approval beyond a calendar year must file for renewal as provided by paragraph (11) of this subsection.

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

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



SUBCHAPTER D. USE AND APPLICATION

4 TAC §§7.30 - 7.33, 7.36, 7.37, 7.39, 7.40

The amendments are adopted pursuant to Section 76.003 of the Texas Agriculture Code (Code), which allows the Department to adopt a list of state-limited-use pesticides and to regulate their terms and conditions of use; Section 76.004 of the Code, which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.075 of the Code, which requires the Department to adopt record-keeping rules related to dealers' distributions of restricted-use and state-limited-use pesticides and regulated herbicides; Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to restricted-use and state-limited-use pesticides and regulated herbicides; Section 76.114 of the Code, which requires the Department to prescribe the information to be entered into pesticide application records; Section 76.141 of the Code, which allows the Department to adopt a list of regulated herbicides; and Section 76.142 of the Code, which allows the Department to adopt rules related to the application of regulated herbicides.

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

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SUBCHAPTER E. REGULATED HERBICIDES

4 TAC §§7.50 - 7.53

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to restricted-use and state-limited-use pesticides and regulated herbicides; and Section 76.144 of the Code, which gives the Department the authority to adopt rules concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with that section.

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

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SUBCHAPTER F. ENFORCEMENT

4 TAC §7.60

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code and Section 76.151 of the Code, which allows the Department to inspect premises of those engaging in any activity regulated under Chapter 76 of the Code.

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

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SUBCHAPTER G. PENALTIES

4 TAC §§7.70, §7.71

The amendments are adopted pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code, and Section 76.1555 of the Code, which allows the Department to assess administrative penalties against those who violate rules adopted under Chapter 76.

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

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §3.37, concerning calculation of annual assessment for banks. The amended rule is adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8846). The amended rule will not be republished.

In 2015, §3.37 was amended to add subsection (b) of this section, automatically escalating marginal assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) index. This was added to eliminate the need for a large, one-time increase in annual assessments, as had occurred previously. At the time of adoption, the department noted that an increase in the GDPIPD will automatically increase marginal assessment rates but may not necessarily result in a proportionate increase in annual assessments. Thus, the department anticipated periodically forgiving a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations, specifically with respect to bank and trust supervision.

In every fiscal year since 2015, the department has discounted or forgiven a portion of a state bank's annual assessment because the forgiven revenue was not needed to cover the department's regular operations, as authorized by §3.36(g). In fiscal years 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022, the department reduced the billable annual assessment by 3.3 percent, 2.9 percent, 13.8 percent, 15.6 percent, 20.1 percent, 22.4 percent, 23.8 percent, and 36.4 percent, respectively.

The amendment as adopted removes the automatic nature of the GDPIPD adjustment, instead making it a permissive tool to be used by the banking commissioner, as necessary. This would ensure that assessment fees remain in line with the revenue needs of the department.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §31.003(a)(4) and 31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §31.106, is affected by the proposed 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.

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TRD-202300818

Catherine Reyer

General Counsel

Finance Commission of Texas

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For further information, please call: (512) 475-1346



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT SUBCHAPTER A. LIBRARY SERVICES AND TECHNOLOGY ACT STATE PLAN

13 TAC §1.21

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §1.21, State Plan for Library Services and Technology Act in Texas. The amendments are adopted without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7835). The rules will not be republished.

JUSTIFICATION. The Library Services and Technology Act (LSTA) provides funding to State Library Administrative Agencies through its Grants to States program administered by the Institute of Museum and Library Services (IMLS). State libraries may use the funding to support statewide initiatives and services and may distribute the funds through subgrants to public, academic, research, school, and special libraries in their states. Each state must have an IMLS-approved five-year plan outlining its programs in support of LSTA priorities.

Government Code, §441.009 authorizes the commission to adopt a state plan for improving library services consistent with federal goals. The statute further requires the agency to prepare the plan and administer the plan the commission adopts. The commission's most recent five-year plan covered federal fiscal year (FFY) 2018-2022.

The amendment is necessary to update the rule to reflect the commission's June 3, 2022, adoption of the new five-year plan covering FFY 2023-2027, which was approved by IMLS on September 14, 2022. Additional amendments are necessary to remove unnecessary language.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The rules are adopted under Government Code, Government Code, §441.009, which authorizes the commission to adopt a state plan for improving library services consistent with federal goals, and, more generally, §441.006(b)(3), which authorizes the commission to accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state.

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

Filed with the Office of the Secretary of State on February 14, 2023.

TRD-202300692

Sarah Swanson
General Counsel

Texas State Library and Archives Commission

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Proposal publication date: November 25, 2022

For further information, please call: (512) 463-5474



13 TAC §1.22

The Texas State Library and Archives Commission (commission) adopts the repeal of 13 TAC §1.22, Circulation, without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7836). The rule will not be republished.

The proposed repeal of §1.22 is necessary because the rule, adopted in 1976, is no longer necessary. The commission will continue to invite public comment on its proposed plan in compliance with requirements of the Institute of Museum and Library Services (IMLS). Restatement of IMLS requirements in a commission rule would be duplicative and unnecessary.

No comments were received regarding the proposed repeal.

The repeal is adopted under Government Code, §441.009, which authorizes the commission to adopt a state plan for improving library services consistent with federal goals, and, more generally, §441.006(b)(3), which authorizes the commission to accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state.

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

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Sarah Swanson
General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5474



CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.59

The Texas State Library and Archives Commission (Commission) adopts the repeal of 13 TAC §2.59, Loan and Exhibition of State Archives, without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7837). The rule will not be republished.

The purpose of the repeal of §2.59 is to update the Commission's existing rule regarding loan and exhibition of state archives and move that rule to Chapter 10, Archives and Historical Resources, the chapter dedicated to rules regarding the state archives and other historical resources. The repeal coincides with the adoption of amendments and new rules to 13 TAC Chapter 10, including new §10.3, Loan and Exhibition of State Archives, also published in this edition of the *Texas Register*.

No comments were received regarding the proposed repeal.

The repeal is adopted under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; and §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

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

Filed with the Office of the Secretary of State on February 14, 2023.

TRD-202300698

Sarah Swanson
General Counsel

Texas State Library and Archives Commission

Effective date: March 6, 2023

Proposal publication date: November 25, 2022

For further information, please call: (512) 463-5474



CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.1

The Texas State Library and Archives Commission (Commission) adopts the repeal of 13 TAC §10.1, Definitions, without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7837). The rule will not be republished.

The repeal of §10.1 is necessary because the commission is adopting new definitions to replace the general reference to statutory definitions in the previous text. The repeal coincides with the adoption of amendments and new rules in 13 TAC Chapter 10, also published in this edition of the *Texas Register*.

No comments were received regarding the proposed repeal.

The repeal is adopted under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital

state records; and §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

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

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5474



13 TAC §§10.1 - 10.4

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §10.2, Public Access to Archival State Records and Other Historical Resources; new §10.1, Definitions; new §10.3, Loan and Exhibition of State Archives; and new §10.4, Reappraisal and Deaccessioning of Items. The amendments and new sections are adopted with no changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7838). The rules will not be republished.

JUSTIFICATION. The adopted amendments and new rules are necessary to ensure the continued preservation and availability of archival state records and other historical resources for future generations, to update and clarify the procedures and requirements for loans of items from the State Archives, and to ensure the agency's process for the care and management of its collections, including the deaccessioning of items when necessary and appropriate, is consistent.

SUMMARY. New §10.1 adds seven new definitions to Chapter 10, Archives and Historical Resources: "agency," "commission," "accession," "deaccession," "disposal," "item," and "reappraisal."

Amendments to §10.2, Public Access to Archival State Records and Other Historical Resources, change "commission" to "agency" as necessitated by the amended definitions.

New §10.3, Loan and Exhibition of State Archives, reflects amendments to the agency's existing rule regarding loans and exhibitions of state archives, previously codified in §2.59, Loan and Exhibition of State Archives. Section 10.3(a) establishes the purpose of the section, which is to specify the conditions under which items may be loaned to eligible borrowers for public exhibition if approved by the agency or the commission. Section 10.3(b) defines eligible borrowers. Section 10.3(c) establishes timing and content requirements for loan requests. Section 10.3(d) establishes maximum loan periods. Section 10.3(e) establishes special circumstances applicable to certain loan requests and loan periods. Section 10.3(f) establishes the requirement for a written loan agreement. Section 10.3(g) establishes the required security and environmental conditions for the display. Section 10.3(h) establishes the appropriate

lighting conditions for a display. Section 10.3(i) prescribes the requirements for handling and installation. Section 10.3(j) addresses staff authority to inspect exhibition areas and loaned items during a loan period. Section 10.3(k) establishes the packing and transportation requirements for a loaned item. Section 10.3(l) establishes insurance requirements. Section 10.3(m) addresses publicity and credit requirements pertaining to loaned items.

New §10.4 outlines the process for the reappraisal and deaccessioning of items from the state archives.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments or new rules.

STATUTORY AUTHORITY. The rules are adopted under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission; and §441.186, which authorizes the state archivist to remove the designation of a state record as an archival state record and permit destruction of the record under rules adopted under Chapter 441, Subchapter L.

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

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

Filed with the Office of the Secretary of State on February 14, 2023.

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5474



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §§402.331 - 402.338

The Texas Lottery Commission (Commission) adopts new 16 TAC §§402.331 (Shutter Card Bingo Systems - Definitions), 402.332 (Shutter Card Bingo Systems - Site System Standards), 402.333 (Shutter Card Bingo Systems - Shutter Card Station and Customer Account Standards), 402.334 (Shutter Card

Bingo Systems - Approval of Shutter Card Bingo Systems), 402.335 (Shutter Card Bingo Systems - Licensed Authorized Organization Requirements), 402.336 (Shutter Card Bingo Systems - Distributor Requirements), 402.337 (Shutter Card Bingo Systems - Security Standards), and 402.338 (Shutter Card Bingo Systems - Inspections and Restrictions) without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8424). The rules will not be republished.

On July 5, 2022, the Commission received a petition filed by Daniel R. Moore Inc., K&B Sales Inc., and Roy Bingo Supplies of Texas Inc., each a Texas licensed distributor of bingo equipment, for adoption of new rules relating to shutter card bingo systems. Although Commission rules recognize shutter cards may be used in the play of bingo, the new rules provide specificity by authorizing and regulating shutter card bingo systems, including customer accounts, for use in Texas. On August 22, 2022, the Commission voted to grant the petition and initiate the rulemaking process to propose these new rules. On December 12, 2022, the Commission voted to publish the new rules in the *Texas Register*.

The new rules are necessary in order to set out clear guidelines for the use of shutter card bingo systems in Texas.

The new Rule 402.331 (Shutter Card Bingo Systems - Definitions) provides definitions for words and terms used relative to shutter card bingo systems.

The new Rule 402.332 (Shutter Card Bingo Systems - Site System Standards) provides requirements for the site system design, internal accounting system, verification of winning shutter cards, storing of certain information regarding transactions affecting a shutter card station and shutter cards, capability to generate reports that detail each transaction of a shutter card sale or return, and use of and requirements of a customer account.

The new Rule 402.333 (Shutter Card Bingo Systems - Shutter Card Station and Customer Account Standards) provides requirements and restrictions for shutter card stations and customer accounts.

The new Rule 402.334 (Shutter Card Bingo Systems - Approval of Shutter Card Bingo Systems) provides the approval process to the manufacturers of shutter card bingo systems for use in Texas.

The new Rule 402.335 (Shutter Card Bingo Systems - Licensed Authorized Organization Requirements) provides licensed authorized organizations the requirements and guidelines for utilizing shutter card bingo systems.

The new Rule 402.336 (Shutter Card Bingo Systems - Distributor Requirements) provides the requirements and guidelines for distributing shutter card bingo systems for use in Texas.

The new Rule 402.337 (Shutter Card Bingo Systems - Security Standards) provides the security standards and restrictions for the shutter card bingo system components: site systems, shutter card stations, and customer accounts.

The new Rule 402.338 (Shutter Card Bingo Systems - Inspections and Restrictions) provides the requirements related to the inspection and restrictions of shutter card bingo systems.

On January 13, 2023, the Commission received a written comment from Ben Lowrance, VFW Department of Texas, in support of the new rules.

On January 18, 2023, the Commission held a public hearing to receive comments on this proposal. Kimberly Kiplin made a comment at the hearing on behalf of Daniel R. Moore Inc., K&B Sales Inc., and Roy Bingo Supplies of Texas Inc., also in support of the adoption of the new rules.

The new rules are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 16, 2023.

TRD-202300790

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: March 8, 2023

Proposal publication date: December 16, 2022

For further information, please call: (512) 344-5392



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER D. OTHER HIGH SCHOOL MATHEMATICS COURSES

19 TAC §111.56

The State Board of Education (SBOE) adopts new §111.56, concerning high school mathematics courses. The new section is adopted without changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8447) and will not be republished. The new section adds a new Advanced Placement (AP) mathematics course to align with current offerings from the College Board.

REASONED JUSTIFICATION: For students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in SBOE administrative rule. In September 2023, the College Board will add a new mathematics course to its AP course catalog. The adopted new rule adds a new AP course to the mathematics Texas Essential Knowledge and Skills so that school districts and charter schools may offer the new AP Precalculus course for state credit toward mathematics graduation requirements.

The SBOE approved the new section for first reading and filing authorization at its November 18, 2022 meeting and for second reading and final adoption at its February 3, 2023 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the begin-

ning of the 2023-2024 school year. The earlier effective date will allow students in Texas to earn state credit toward graduation in the first school year the course is made available by College Board. The effective date is August 1, 2023.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 23, 2022, and ended at 5:00 p.m. on January 27, 2023. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2023 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on February 17, 2023.

TRD-202300805
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 475-1497



CHAPTER 129. STUDENT ATTENDANCE

The State Board of Education (SBOE) adopts the repeal of §129.1 and §129.21, concerning student attendance accounting. The repeal is adopted without changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8451) and will not be republished. The adopted repeal implements House Bill (HB) 3, 86th Texas Legislature, 2019, which removed the SBOE's rulemaking authority related to student attendance.

REASONED JUSTIFICATION: Chapter 129, Subchapter A, defines the student attendance allowed in Texas schools. The subchapter was adopted effective September 1, 1996. Chapter 129, Subchapter B, defines the requirements for student attendance accounting for state funding purposes. The subchapter was adopted effective September 1, 1996, and was last amended effective December 25, 2019.

HB 3, 86th Texas Legislature, 2019, renumbered Texas Education Code (TEC), §42.004, to §48.004. The renumbered statute was amended to transfer rulemaking authority related to the implementation and administration of student attendance from the SBOE to the commissioner of education. The repeal of the rules is necessary since statutory authority no longer exists.

The SBOE approved the repeal for first reading and filing authorization at its November 18, 2022 meeting and for second reading and final adoption at its February 3, 2023 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will implement legislation in a timely manner by removing provisions for which statutory authority no longer exists. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 23, 2022, and ended at 5:00 p.m. on January 27, 2023. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2023 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. STUDENT ATTENDANCE ALLOWED

19 TAC §129.1

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules, take actions, and require reports necessary to implement and administer student attendance.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on February 17, 2023.

TRD-202300806
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 9, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 475-1497



SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

19 TAC §129.21

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which

requires the commissioner to adopt rules, take actions, and require reports necessary to implement and administer student attendance.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

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

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TRD-202300807

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Free-standing Ambulatory Surgical Center. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8460). This rule will not be republished.

The amendments clarify that a pharmacist must verify the completeness and reconciliation of the perpetual inventory of controlled substances for an ASC pharmacy.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300710

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Effective date: March 7, 2023

Proposal publication date: December 23, 2022

For further information, please call: (512) 305-8026



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8470). This rule will not be republished.

The amendments correct a drafting error by adding an omitted word.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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TRD-202300711

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Effective date: March 7, 2023

Proposal publication date: December 23, 2022

For further information, please call: (512) 305-8026



CHAPTER 303. DESTRUCTION OF DRUGS

22 TAC §303.1

The Texas State Board of Pharmacy adopts amendments to §303.1, concerning Destruction of Dispensed Drugs. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8473). The rule will not be republished.

The amendments remove the inventory requirements for destruction using a waste disposal service of dangerous drugs dispensed in health care facilities or institutions and clarify dangerous drugs may be comingled with controlled substances

in a shared container prior to destruction as allowed by federal laws and regulations.

The Board received comments from Lauren Paul, Pharm.D., with CVS Health, in support of the amendments and suggesting the removal of the inventory requirement for the destruction of drugs by a consultant pharmacist. The Board declines to make this change.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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TRD-202300708
Julie Spier, R.Ph.
President
Texas State Board of Pharmacy
Effective date: March 7, 2023
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For further information, please call: (512) 305-8026



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.6

The Texas State Board of Pharmacy adopts amendments to §315.6, concerning Pharmacy Responsibility - Electronic Reporting. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8475). The rule will not be republished.

The amendments specify that a pharmacy must report the data elements indicated as required by the board's Data Submission Guide for Dispensers.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Julie Spier, R.Ph.
President
Texas State Board of Pharmacy
Effective date: March 7, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 305-8026



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.9

The Texas Behavioral Health Executive Council adopts amendment §463.9, relating to Licensed Specialist in School Psychology. Section 463.9 is adopted with changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6384) and will be republished.

Reasoned Justification.

The adopted amendment to subsection (c) makes clear that accredited programs by NASP are considered to meet all training and internship requirements for licensure under this rule, the same as NASP approved programs. Subsection (d) has been amended to allow for those that did not obtain a specialist degree from a school psychology program to apply for licensure if they have obtained a certificate of completion from a graduate-level training course designed to train individuals from related disciplines in the practice of school psychology.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter believes the rule should be amended to allow any appropriate degree in psychology to qualify for licensure as an LSSP. The commenter asserts that if one passes the Jurisprudence and Praxis Examinations then that person should be given a license.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to make changes to this rule as requested by the commenter. The rule requires applicants for an LSSP to complete a graduate degree in psychology from a regionally accredited institution of higher education, and a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology. The rule does not

require qualifying degrees to only be titled psychology or school psychology, but the major or program of study must have psychology in the title. This allows for any appropriate degree in psychology to potentially qualify for licensure. The Executive Council is not legally permitted to issue an LSSP to an applicant that only passes the Jurisprudence and Praxis Examinations. Section 501.260 of the Occupations Code requires the Executive Council to set certain minimum standards for the issuance of an LSSP, and these include additional requirements such as the completion of certain graduate level coursework and the completion of at least 1,200 hours of supervised experience. These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

§463.9 Licensed Specialist in School Psychology.

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

- (1) hold an appropriate graduate degree;
- (2) provide proof of specific graduate level coursework;

(3) provide proof of an acceptable internship;

(4) provide proof of passage of all examinations required by the Council; and

(5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Appropriate Graduate Degrees.

(1) Applicants who do not hold active NCSP certification, or who did not graduate from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology.

(2) Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement.

(3) An applicant who holds a graduate degree that does not qualify under subsection (d)(1) but meets the requirements of subsection (d)(2) is considered to have an appropriate graduate degree if the applicant holds a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

(1) Psychological Foundations, including:

- (A) biological bases of behavior;
- (B) human learning;
- (C) social bases of behavior;
- (D) multi-cultural bases of behavior;
- (E) child or adolescent development;
- (F) psychopathology or exceptionalities;

(2) Research and Statistics;

(3) Educational Foundations, including any of the following:

- (A) instructional design;
- (B) organization and operation of schools;
- (C) classroom management; or

- (D) educational administration;
- (4) Assessment, including:
 - (A) psychoeducational assessment;
 - (B) socio-emotional, including behavioral and cultural, assessment;
- (5) Interventions, including:
 - (A) counseling;
 - (B) behavior management;
 - (C) consultation;
- (6) Professional, Legal and Ethical Issues; and
- (7) A Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

- (1) At least 600 of the internship hours must have been completed in a public school.
- (2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this title.
- (3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.
- (4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.
- (5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.
- (6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.
- (7) Internship hours must be obtained in not less than one or more than two academic years.
- (8) An individual completing an internship under this rule must be designated as an intern.
- (9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.
- (10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Provision of psychological services in the public schools by unlicensed individuals.

- (1) An unlicensed individual may provide psychological services under supervision in the public schools if:
 - (A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education; or

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300766
 Darrel D. Spinks
 Executive Director
 Texas State Board of examiners of Psychologists
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 Proposal publication date: September 30, 2022
 For further information, please call: (512) 305-7706



22 TAC §463.10

The Texas Behavioral Health Executive Council adopts amendment §463.10, relating to Licensed Psychologists. Section 463.10 is adopted without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6387) and will not be republished.

Reasoned Justification.

The adopted amendment removes the criteria for applicants with a doctoral degree conferred prior to January 1, 1979, from this rule. The same criteria is adopted in new rule §463.15.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Exec-

utive 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §463.11

The Texas Behavioral Health Executive Council adopts amendment §463.11, relating to Supervised Experience Required for Licensure as a Psychologist. Section 463.11 is adopted without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6957) and will not be republished.

Reasoned Justification.

The adopted amendment to subsection (b) adds the Psychological Clinical Science Accreditation System to the list of accredited programs where an applicant can count supervised experience obtained in excess of the 1,750 required as part of the applicant's internship. Subsection (c)(2) has been deleted, doing away with any time requirements between when a degree is awarded and when the individual applies for licensure. Corresponding amendments have been made in subsection (f) because of the deletion of subsection (c)(2).

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §463.12

The Texas Behavioral Health Executive Council adopts amendment §463.12, relating to Temporary License. Section 463.12 is adopted without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6393) and will not be republished.

Reasoned Justification.

The adopted amendment repeals the requirement that temporary license holders get preapproval 24 hours before one intends to use such a license in this state. Temporary license holders will only be required to report the use of this license after utilizing the full thirty days or the expiration of one year from licensure, whichever occurs first.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by

§501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §463.15

The Texas Behavioral Health Executive Council adopts new §463.15, relating to Criteria for Degrees Conferred Prior to 1979. Section 463.15 is adopted without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6395) and will not be republished.

Reasoned Justification.

This adopted new rule moves the criteria for applicants with a doctoral degree conferred prior to January 1, 1979, from rule §463.10 to this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

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Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

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



SUBCHAPTER F. PROFESSIONAL
DEVELOPMENT

22 TAC §463.35

The Texas Behavioral Health Executive Council adopts the repeal of §463.35, relating to Professional Development. Section 463.35 is repealed without changes to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6554) and will not be republished. This adopted repeal corresponds with the adoption of a new rule elsewhere in this issue of the *Texas Register*.

Reasoned Justification.

This rule is adopted to be repealed and replaced by a new §465.35, pertaining to Requirements for Professional Development, which is formatted similarly to the other Boards under the Executive Council.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted 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 adopts 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 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 adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule or repeal 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 or repeal has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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



22 TAC §463.35

The Texas Behavioral Health Executive Council adopts new §463.35, relating to Requirements for Professional Development. Section 463.35 is adopted with changes to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6555) and will be republished.

Reasoned Justification.

This adopted new rule is intended to streamline all the continuing education into a rule formatted similarly to the other Boards under the Executive Counsel. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, licensees will be able to carry forward up to ten hours from the previous cycle if they were not used, licensees can opt to take the jurisprudence examination for one hour of ethics credit, and lastly licensees can now claim up to one hour of self-study continuing education credit. The rule is adopted with changes in response to comments made on other continuing education rules for other boards regulated by the Council, these changes add hospitals and hospital systems to the list of providers that licensees must obtain at least fifty percent of their professional development from for each renewal cycle.

List of interested groups or associations against the rule.

Texas Association of Psychological Associates

Summary of comments against the rule.

A commenter requested that "long-term residence in rural areas" be added to subsection (c) of the adopted rule, because, as the commenter opined, Texas has vast rural areas and the majority of licensees live in urban areas so the commenter wanted rural culture to be specifically identified in the rule.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to amend the rule as requested by the commenter. Subsection (c) provides a non-exhaustive

list of what would be acceptable to meet the cultural diversity or competency professional development hours requirements in the rule. The Executive Council believes the list of examples in subsection (c) is sufficient and declines to include an exhaustive list of every type of culture or competency that may be worthy of inclusion because, as the Texas Court of Civil Appeals for Texarkana concluded in *Marrs v. Matthews*, 270 S.W. 586, at 588 (Tex. Civ. App.-Texarkana 1925, writ ref'd):

Different minds might reach different conclusions as to what qualities of character should render one unworthy to hold a certificate to teach. But there can be no difference of opinion about the fact that an unworthy person should not be permitted to teach in the public schools. What qualities, or lack of qualities, should render one unworthy would be difficult for legislative enumeration. They are so numerous, and their combinations so varied in different individuals, that a statute which undertakes to be more specific would either be incomplete, or so inflexible as to defeat the ends sought. In the very nature of the subject there must be lodged somewhere a personal discretion for determining who are the "unworthy."

These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

§463.35. *Requirements for Professional Development.*

(a) Minimum Professional Development Hours Required:

(1) A licensee must complete 40 hours of professional development during each renewal period that they hold a license. The 40 hours of professional development must include 6 hours in ethics and 6 hours in cultural diversity or competency.

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Acceptable ethics hours include, but are not limited to professional development on:

(1) state or federal laws, including agency rules, relevant to the practice of psychology;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(c) Acceptable cultural diversity or competency hours include, but are not limited to professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(d) Acceptable Professional Development Activities:

(1) All professional development hours must have been received during the renewal period unless allowed under subsection (a)(2) of this section, and be directly related to the practice of psychology;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of psychology;

(3) Except for hours claimed under subsection (g), all professional development hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a professional development activity may not be claimed for the same renewal period.

(e) Licensees must obtain at least fifty percent of their professional development hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(7) any provider approved or endorsed by a provider listed herein.

(f) Licensees shall receive credit for professional development activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the professional development activity.

(g) Notwithstanding subsection (e) above, licensees may claim professional development credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of professional development in ethics.

(2) Preparing and giving a presentation at a professional development activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of professional development credit.

(7) Providing supervision to supervisees delivering psychological services to individuals residing in a rural mental health discipline Health Professional Shortage Area (HPSA) identified by the U.S. Health Resources & Services Administration (HRSA). The maximum number of hours that may be claimed for this activity is 20 and hours claimed may not be counted toward the ethics or cultural diversity or competency requirements.

(h) The Council does not pre-evaluate or pre-approve professional development providers or hours.

(i) Licensees shall maintain proof of professional development compliance for a minimum of 3 years after the applicable renewal period.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts amendments to §535.223, Standard Inspection Report Form, in Subchapter R of Chapter 535, General Provisions, without changes to the text, as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7852) and won't be republished.

The amendments to §535.223 clarify that when multiple boxes are checked for a particular item on the report form, the inspector must also explain the reason for checking multiple boxes. The amendments also remove single-system inspections from the list of exemptions—meaning the requirements in §535.223 would apply to those inspections.

The Commission received 13 comments. The Texas Real Estate Inspector Committee met on January 17, 2023, and addressed these comments. Nine comments discussed the change when multiple boxes are checked. Of those, three commenters felt that additional explanations were beneficial to consumers, with one specifically mentioning that this change would conform with current business practice and another commenting on a practice of referring out further inspections. One commenter asked for further guidance on how to comply with this change and questioned the current report form format. The Commission will provide an instruction sheet to provide further guidance that will be released on the website in conjunction with the adoption of this change. Another commenter felt the change was burdensome. One commenter believed the change was unnecessary.

Eight comments discussed the removal of single-system inspections from the list of exemptions. Two commenters felt the change could lead to confusion, with one commenter opining that there may be liability concerns if using the report form in this way. One commenter felt the change was unnecessary. One commenter felt the change was burdensome and inquired about the use of the report form for re-inspections if this change is adopted.

Three commenters generally discussed both changes. One commenter generally felt the changes were unnecessary, while another commenter generally felt the changes were necessary. One commenter generally cited concern about consumer cost and use of attorneys.

In response to these comments, the Inspector Committee declined to make changes at this time, stating that the changes are necessary and that many of the opposing comments stemmed from a misunderstanding of the requirements. The Inspector Committee voted to recommend the adoption of these amendments.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300726

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.140

The Texas Behavioral Health Executive Council adopts new §681.140, relating to Requirements for Continuing Education. Section 681.140 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8226) and will not be republished.

Reasoned Justification.

This adopted new rule consolidates all the continuing education requirements contained in multiple rules into this single rule. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, LPCs will now be required to complete three hours of cultural diversity or competency; licensees with supervisor status will be required to complete six hours in supervision, but these hours will count towards the minimum required hours instead of in addition to the required hours; licensees may carry up to 10 unclaimed continuing education hours of from one renewal period to the next; and lastly licensees can now claim up to one hour of self-study continuing education credit.

The Executive Council had previously received public comments both in support and in opposition to subsection (f), which requires licensees to obtain at least fifty percent of their continuing education hours from one of the providers listed in subsection (f). The requirements of subsection (f) are intended to make sure that at least some of the continuing education that licensees receive is from sources that have a level of organization and oversight available to ensure the quality of the coursework provided. This requirement will alleviate the risk that licensees receive all of their continuing education from one individual or single source provider that has never been reviewed, edited, or vetted by any other individual or organization. Many of the comments in opposition to subsection (f) request that the Executive Council include other groups of individuals or entities to this list. The Executive Council believes the currently adopted list is sufficient and de-

clines to include an exhaustive list of every individual or entity that may be worthy of inclusion because, as the Texas Court of Civil Appeals for Texarkana concluded in *Marrs v. Matthews*, 270 S.W. 586, at 588 (Tex. Civ. App.-Texarkana 1925, writ ref'd):

Different minds might reach different conclusions as to what qualities of character should render one unworthy to hold a certificate to teach. But there can be no difference of opinion about the fact that an unworthy person should not be permitted to teach in the public schools. What qualities, or lack of qualities, should render one unworthy would be difficult for legislative enumeration. They are so numerous, and their combinations so varied in different individuals, that a statute which undertakes to be more specific would either be incomplete, or so inflexible as to defeat the ends sought. In the very nature of the subject there must be lodged somewhere a personal discretion for determining who are the "unworthy."

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter voiced opposition to the rule because the commenter believed the requirement that fifty percent of a licensee's continuing education hours must come from a provider listed in subsection (f) will make it more costly for licensees to earn the required hours during their renewal period.

A commenter voiced opposition to the rule because the commenter opined that the new rule was overly complicated and restrictive, which will create new ways for licensees to be in violation. The commenter disagrees with the inclusion of licensees with supervisor status to subsection (f), because the commenter believes taking a 40 hour supervisory course is not sufficient to teach continuing education. The commenter is opposed to the inclusion of the 3 required hours of cultural diversity or competency because the commenter believes this requirement is unnecessary and fulfills some type of political agenda of activists trying to assert their values on the profession. The commenter does not believe these rule changes will fix any problems.

List of interested groups or associations for the rule.

Texas Counseling Association

Texas Medical Association

Summary of comments for the rule.

Several commenters voiced their support for this new rule.

One commenter voiced support for the addition of cultural competency requirements but asked to clarify whether the human trafficking course moving forward would be optional or mandatory for the renewal of a license.

A commenter voiced support for this rule stating that it will help protect the public and allow flexibility for licensees.

A commenter voiced support for the inclusion of the 3 required hours of cultural diversity or competency, but the commenter believes the requirement that fifty percent of continuing education come from providers listed in subsection (f) may be difficult to manage and the commenter requested this requirement be reduced to twenty-five percent.

A commenter voiced support for this rule change, the commenter believes this rule change aligns with the mission of the Texas State Board of Examiners of Professional Counselors, which the commenter states is to protect the protect the people of Texas

by ensuring professional counselors are qualified and competent practitioners. Further, the commenter believes that the rule ensures that continuing education programs for all licensees reflect the needs of our diverse communities, impart the best and most current research and practices across the counseling profession, are accessible through an array of delivery options, and that LPC-Supervisors are well trained. The commenter opined that subsection (f) is intended to ensure that at least some of the continuing education that licensees receive is from sources that have a level of organization and oversight to monitor and maintain the quality of the coursework provided. And the expanded list of activities in subsection (h) provides a broad array of opportunities to earn continuing education hours and ensures that no single entity will have a monopoly on continuing education programs. Lastly, the commenter appreciated that the rule allows for continuing education credit for passage of the jurisprudence examination, but the commenter requested that the rule mandate passage of this exam for the renewal of a license.

One commenter supports the rule amendments but requests a citation to Chapter 503 of the Occupations Code be added to this rule. This commenter opines that the addition of this citation will direct readers to the underlying authority, which will aid continuing education providers and licensees in developing and selecting courses that will meet approval.

Agency Response.

The Executive Council appreciates the supportive comments and declines to amend the rule as requested by some of the commenters.

The Executive Council does not believe that subsection (f) will cause an increase in costs to licensees as suggested by some commenters. Subsection (f) does not require all continuing education obtained by a licensee to come from a provider listed in this subsection, it only requires fifty percent. The Executive Council has crafted the proposed provisions in a manner that balances the promotion of quality coursework through oversight with the preservation of flexibility for licensees to take and offer a wide range of continuing education courses. Many, if not most, licensees are already taking courses that comply with subsection (f). Therefore, it is believed that subsection (f) will have little to no impact on the costs of continuing education.

The inclusion of licensees with supervisor status in subsection (f) is consistent with the purposes behind this rule, as well as the purpose a licensee with supervisor status serves. Contrary to the commenter's assertion, to achieve supervisor status a licensee must do more than just take a 40 hour supervisory course. Additionally, supervisors are those licensees that are authorized to and capable of educating, teaching, and training associate licensees during their required 3,000 hours of supervised experience, so a supervisor should also be capable of presenting a continuing education course. Additionally, the inclusion of the 3 required hours of cultural diversity or competency does not advance any specific political, social, or activist agenda. Subsection (d) provides a non-exhaustive list of acceptable cultural diversity or competency hours, which include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status. Subsection (d) does not require licensees take specific cultural diversity or competency courses, it only requires that they take some continuing education hours, of their choosing, that relate to cultural diversity or competency.

Section 116.003 of the Occupations Code requires that in order to renew a licensee issued by the Executive Council an individual must complete a required training course on human trafficking prevention. This rule makes it clear that licensees will receive continuing education credit when they complete this required course.

The Executive Council declines to reduce the requirements of subsection (f) from fifty percent to twenty-five percent because, as discussed above, it is believed that many, if not most, licensees are already taking courses that comply with subsection (f). Additionally, subsection (a)(2) will now allow a licensee to carry forward up to 10 hours to the next renewal period if those hours were not needed for renewal, so the Executive Council believes this will also help reduce the burden on licensees to comply with this rule, specifically subsection (f). And lastly, subsection (k) makes the effective date of the requirements of subsection (f) January 1, 2024, so licensees should have plenty of time to adjust and comply with this new requirement.

An amendment to this rule to require passage of the jurisprudence examination is not needed because subsection (b)(2) of the adopted rule requires that all licensees must successfully complete the jurisprudence examination each renewal period.

Section 681.1 states the purpose for the Texas State Board of Examiners of Professional Counselors' rules, which is to implement the provisions of Chapter 503 of the Occupations Code, the Licensed Professional Counselor Act. Additionally, §681.2(2) defines the term "Act" as the Licensed Professional Counselor Act, Chapter 503 of the Occupations Code; and this term is used throughout the Board's rules. With there already being references to Chapter 503 in the Board's rules, the Executive Council finds there is not a need to provide additional citations or references to the same statutory authority.

These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 the adoption this rule to the Executive Council. The rule 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300755

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: March 7, 2023

Proposal publication date: December 16, 2022

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



22 TAC §§681.141 - 681.143, 681.145

The Texas Behavioral Health Executive Council adopts the repeal of §681.141, relating to General Continuing Education Requirements; §681.142, relating to Acceptable Continuing Education; §681.143, relating to Activities Unacceptable as Continuing Education; and §681.145, relating to Determination of Clock-hours Granted. Sections 681.141, 681.142, 681.143, and 681.145 are repealed without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8228) and will not be republished.

Reasoned Justification.

These rules are repealed because these same requirements have been added to new §681.140, pertaining to requirements for continuing education, which is adopted elsewhere in this issue of the *Texas Register*.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted 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 adopts 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 the adoption 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 adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule or repeal 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 or repeal 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 adopt this repeal.

Lastly, the Executive Council also adopts 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

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



22 TAC §681.147

The Texas Behavioral Health Executive Council adopts amendment §681.147, relating to 40-Clock-Hour Supervisor Training Course. Section 681.147 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8230) and will not be republished.

Reasoned Justification.

Section 681.142 has been repealed and replaced with new §681.140, so corresponding amendments have been made to this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

Texas Counseling Association

Texas Medical Association

Summary of comments for the rule.

A commenter voiced support for this rule stating that it will help protect the public and allow flexibility for licensees.

One commenter voiced support for this rule change, the commenter believes this rule change aligns with the mission of the Texas State Board of Examiners of Professional Counselors, which the commenter states is to protect the protect the people of Texas by ensuring professional counselors are qualified and competent practitioners.

A commenter supports the rule amendments but requests a citation to Chapter 503 of the Occupations Code be added to this rule. The commenter opines that the addition of this citation will direct readers to the underlying authority, which will aid continuing education providers and licensees in developing and selecting courses that will meet approval.

Agency Response.

The Executive Council appreciates the supportive comments and declines to amend the rule as requested by the one commenter.

Section 681.1 states the purpose for the Texas State Board of Examiners of Professional Counselors' rules, which is to implement the provisions of Chapter 503 of the Occupations Code, the Licensed Professional Counselor Act. Additionally, §681.2(2) defines the term "Act" as the Licensed Professional Counselor Act, Chapter 503 of the Occupations Code; and this term is used throughout the Board's rules. With there already being references to Chapter 503 in the Board's rules, the Executive Council finds there is not a need to provide additional citations or references to the same statutory authority.

These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory authority.

The rule is adopted 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 adopts this rule 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 the adoption this rule to the Executive Council. The rule 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

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



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.303

The Texas Behavioral Health Executive Council adopts amendment §781.303, relating to General Standards of Practice. Section 781.303 is adopted without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6397) and will not be republished.

Reasoned Justification.

The adopted amendments have been made to better align this rule with the statutory rights and duties listed in Sections 151.001, 153.132, and 153.371 of the Family Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 the adoption of this rule to the Executive Council. The rule 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 adopts this rule 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 the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule 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.

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

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TRD-202300753

Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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Proposal publication date: November 30, 2022
For further information, please call: (512) 305-7706



PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.142

The Texas Behavioral Health Executive Council adopts amendment §801.142, relating to Supervised Clinical Experience Requirements and Conditions. Section 801.142 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8240) and will not be republished.

Reasoned Justification.

The adopted amendments add new subsection (10) which allows for students in doctoral programs to count supervised experience hours toward licensure requirements when obtained after the conferral of their master's degree that meets licensure requirements. Additionally, other amendments have been adopted to correct typographical errors.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requests that this rule be amended to no longer place a limit on technology-assisted services and instead to require a portion of the hours required by the rule to be technology-assisted.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to make changes to this rule as requested by the commenter because they are outside of the scope of the proposed amendments to this rule. The adopted amendments to this rule do not pertain to technology-assisted services, which is the subject of the commenter's proposed changes. This rule does not limit the amount of technology-assisted services hours a licensee can provide, it limits the amount of technology-assisted hours that an LMFT-Associate may use in their application for an LMFT to 500 hours. If the Council later decides to amend this rule and address technology-assisted

services, as requested by the commenter, a new rulemaking proposal would be required. These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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Proposal publication date: December 16, 2022

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



22 TAC §801.143

The Texas Behavioral Health Executive Council adopts amendment §801.143, relating to Supervisor Requirements. Section 801.143 is adopted with changes to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6557) and will be republished.

Reasoned Justification.

The adopted amendment provides more specific details regarding the minimum standards for the 40 hours of education required to apply for supervisor status.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The rule amendments require the 40-hour continuing education course in clinical supervision be taught by a licensed marriage and family therapist holding supervisor status (LMFT-S), and a commenter requested the rule allow for other license types, such as a licensed clinical social worker with supervisor status, to teach this course.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council agrees to amend the rule in response to public comment. At the January 27, 2023, meeting of the Texas State Board of Examiners of Marriage and Family Therapists the Board discussed whether the 40-hour course requirements cover principles of supervision that apply to all licensees of the Executive Council or only licensees that practice marriage and family therapy. The Board determined that other licensees of the Executive Council with supervisor status are competent to teach the principles of supervision to an LMFT, so the Board voted to amend the rule in response to this public comment. Subsection (m)(1) is changed from "the course must be taught by a licensed marriage and family therapist holding supervisor status issued by the Council" to "the course must be taught by a graduate-level licensee holding supervisor status issued by the Council" which will allow for other licensees of the Executive Council with supervisor status to teach the 40-hour course in supervision required for licensure as an LMFT-S.

These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule with changes responsive to public comment.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision; or

(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours

with couples or families accumulated up to the date of the conference; and

(5) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may not supervise more than 12 persons at one time.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.

(i) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(j) A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(k) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(l) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) At a minimum, the 40-hour continuing education course in clinical supervision, referenced in subsection (a)(1)(B) of this rule, must meet each of the following requirements:

(1) the course must be taught by a graduate-level licensee holding supervisor status issued by the Council;

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-hour supervision training must include at least:

(A) three (3) hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) hours for supervisory relationship and marriage and family therapist development;

(C) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(E) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(n) Subsection (m) of this rule is effective May 1, 2023.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300763

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 7, 2023

Proposal publication date: October 7, 2022

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



22 TAC §801.202

The Texas Behavioral Health Executive Council adopts amendment §801.202, relating to LMFT Associate License. Section 801.202 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8242) and will not be republished.

Reasoned Justification.

The adopted amendments change the LMFT Associate license to a five year non-renewable term, similar to the LPC Associate license structure.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that the proposed rule change will not protect the public and would like data about the length of time applicants have remained an LMFT-Associate, whether there have been many who have exceeded the 72 month limit or 96 month extension limit.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to amend the rule as requested by the commenter. Since 2018 almost 80% of all LMFT-Associates have completed their supervised experience in under three years, and 98% have completed it in under four years. Since 2018 there has been little to no need for an LMFT-Associate to have their associate license beyond five years. Hypothetically, if in the future an LMFT-Associate does not complete the required supervised experience in under five years, then the associate can reapply for a new five year term LMFT-Associate license to complete the remaining required supervised experience. But based on the Executive Council's data this will most likely be a rare occurrence. This adopted rule amendment will decrease costs for LMFT-Associates, because they will no longer have to pay renewal fees, and it will streamline the application process for associates as well as agency staff. These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

§801.202. LMFT Associate license.

(a) An LMFT Associate license expires 60 months from the date of issuance.

(b) An LMFT Associate who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.

(c) As of the effective date of this rule, all active LMFT Associate licenses shall be converted to a 60-month licensure term, with a new expiration date set 60 months after the effective date of this rule.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300764

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 7, 2023

Proposal publication date: December 16, 2022

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



22 TAC §801.261

The Texas Behavioral Health Executive Council adopts amendment §801.261, relating to Requirements for Continuing Education. Section 801.261 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8243) and will not be republished.

Reasoned Justification.

The adopted amendments to this rule add hospitals and hospital systems to subsection (f) and makes the effective date of subsection (f) January 1, 2024. Additionally, amendments to §801.202 are being adopted in this issue of the *Texas Register* so corresponding amendments to subsection (a)(2) are also being adopted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter objects to the amendment being made to this rule which does away with the requirement that LMFT-Associates must obtain continuing education, the commenter opines that this requirement needs to remain in order to protect the public from someone who is still learning the craft.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to amend the rule as requested by the commenter. Section 801.202 has been amended to make the LMFT-Associate license a five year term which cannot be renewed. Continuing education is a requirement for the renewal of a license, since the associate license cannot be renewed then there is no need to require continuing education for the associate license. Public protection is achieved by requiring all LMFT-Associates practice under the supervision of an LMFT-S, which

is required by other rules. These adopted rule amendments are consistent with state policy, therefore the Executive Council adopts this rule without any changes.

Statutory Authority.

The rule is adopted 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 adopts this rule 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 §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 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 adopts this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule 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.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300765

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 7, 2023

Proposal publication date: December 16, 2022

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



PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

22 TAC §882.42

The Texas Behavioral Health Executive Council adopts amended §882.42, relating to Ineligibility Due to Criminal History. Section 882.42 is adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8477) and will not be republished.

Reasoned Justification.

This amended rule clarifies that if a criminal offense took place in some other jurisdiction, besides Texas, it can be a basis for the denial of an application or revocation or suspension of a license if the offense is substantially similar to a Texas offense listed in the rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted 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 adopts this rule 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.

The Executive Council adopts this rule pursuant to the authority found in §507.156 of the Tex. Occ. Code which requires the Executive Council to adopt rules necessary to comply with Chapter 53 of the Tex. Occ. Code.

The Executive Council also adopts this rule 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.

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

Filed with the Office of the Secretary of State on February 15, 2023.

TRD-202300754
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: March 7, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 305-7706



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.1

The Texas Department of Public Safety (the department) adopts amendments to §16.1, concerning General Requirements. This rule is adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8958) and will not be republished.

The proposed rule amendment changes the date the department has established for adopting Title 49, Code of Federal Regulations (CFR) Part 383 by incorporation. This allows the depart-

ment to incorporate recent federal rule changes through the new date proposed by this amendment. Another recent change to federal regulations allows a state to waive the requirement for a holder of a Class A commercial driver license to obtain a hazardous materials endorsement when transporting diesel under certain circumstances. The proposed rule amendment adds a reference to 49 CFR §383.3(i) to adopt this exception allowed by the recent change.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

Filed with the Office of the Secretary of State on February 17, 2023.

TRD-202300800
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 9, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 424-5848





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

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning March 2023, will review and consider for reoption, revision, or repeal Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist. The Agency's Board will consider, among other things, whether the initial factual, legal, and policy reasons for adoption of these rules continue to exist, whether these rules should be repealed, and whether any changes are needed. This notice to review has no effect on the chapters as they currently exist. Readopted chapters will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register*. Such changes will be open for public comment prior to the final adoption of any changes to the rule by the Agency in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

TRD-202300838

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: February 22, 2023



Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 Texas Administrative Code (TAC) Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 157 relate to hearings and appeals and are organized under the following subchapters: Subchapter A, General Provisions for Hearings Before the State Board of Education, and Subchapter D, Independent Hearing Examiners.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 157, Subchapters A and D, continue to exist.

The public comment period on the review begins March 3, 2023, and ends at 5:00 p.m. on April 7, 2023. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/State_Board_of_Education_Rule_Review](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/State_Board_of_Education_Rule_Review). The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2023 in accordance with the SBOE board operating policies and procedures.

TRD-202300851

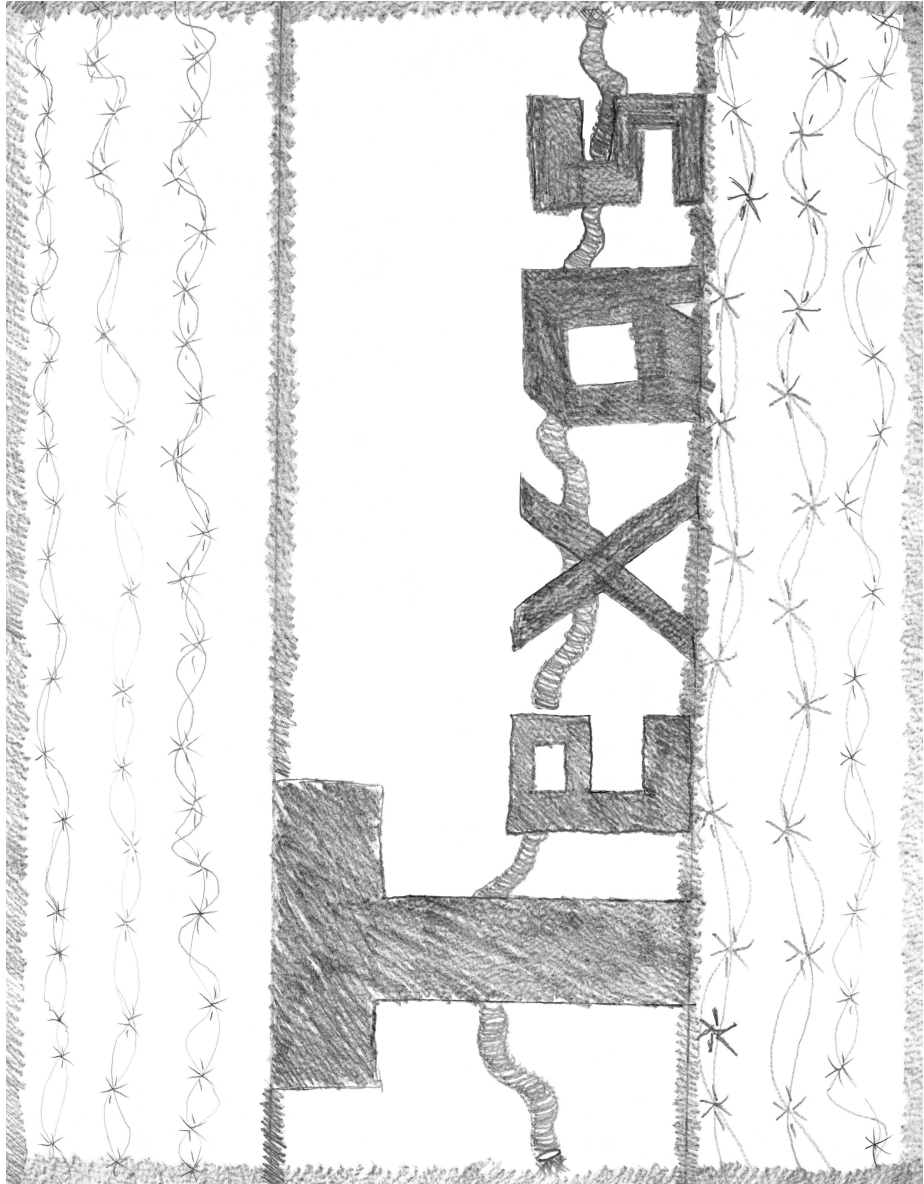
Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 22, 2023





IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

ACT Policy - Draft 2023

Public Comment Needed: Affordable Communities of Texas program ("ACT") policies

The 2023 Affordable Communities of Texas program ("ACT") policies are now available for public comment. A copy of the proposed amendments may be found on TSAHC's website at www.tsahc.org. Please submit public comment via email to Cassandra Ramirez at cramierez@tsahc.org with the subject line "ACT policies." Public comment must be submitted for consideration by March 24, 2023 at 5:00 p.m.

TRD-202300833

David Long
President

Texas State Affordable Housing Corporation

Filed: February 21, 2023



The Texas Foundations Fund Draft Guidelines 2023

Public Comment Needed: 2023 Texas Foundations Fund

The 2023 Texas Foundations Fund Draft Guidelines are now available for public comment. A copy of the 2023 Texas Foundations Fund Draft Guidelines may be found on the Corporation's website at www.tsahc.org. Please submit public comment via email to Anna Orendain at aorendain@tsahc.org with the subject line "2023 Texas Foundations Fund Public Comment." Public comment must be submitted for consideration by March 24, 2023, at 5:00 p.m.

TRD-202300832

David Long
President

Texas State Affordable Housing Corporation

Filed: February 21, 2023



Texas Department of Agriculture

Notice of Stakeholder Meeting on Proposed New 4 TAC Chapter 12, Subchapter I

Date of Meeting: March 8, 2023

Time of Meeting: 9:00 a.m. - 12:00 p.m.

Meeting: The Texas Department of Agriculture (Department) will hold a stakeholder meeting on March 8, 2023, at 9:00 a.m., to receive public comment on the Department's proposed new electric vehicle charging station rules, Texas Administrative Code, Title 4, Part 1, Chapter 12, Subchapter I, §§912.75 - 912.92. The proposed rules were published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8377).

This stakeholder meeting will be held at the Stephen F. Austin Building, 1700 N. Congress, 11th Floor, Austin, Texas 78701.

Members of the public may also attend the meeting online via the Microsoft TEAMS application at https://teams.microsoft.com/l/meetup-join/19%3ameeting_Mjg4ZDkyY2EtMTU4OC00MGY-zLWI0NDctMjYxZDIzZjM2YmQ3%40thread.v2/0?context=%7b%22Tid%22%3a%220d16d504-d03a-4e2e-8316-8408747d7c7f%22%2c%22Oid%22%3a%2265cfe418-dc4a-4178-b157-07322dbca791%22%7d

Meeting ID: 241 411 900 734

Passcode: Y4YLB2

Members of the public who would like to attend the meeting may also join telephonically by calling 512-910-3546 or 833-213-7037.

Phone Conference ID: 561 711 551#

Agenda:

1. Call to Order
2. Stakeholder meeting to receive comments from interested persons concerning proposed new Texas Administrative Code, Title 4, Part 1, Chapter 12, Subchapter I (Electric Vehicle Charging Stations). Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning commenters will be reserved exclusively for Department staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the meeting, the Department reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member when possible.
3. Adjourn

Comments:

Public Comment or Testimony. The Department welcomes public comments pertaining to the proposed rules. Members of the public who would like to provide public comment may choose from the following options:

Oral Comments. Each public comment is limited to five minutes. The Department may extend this time period if it considers the circumstances appropriate to do so. Speakers must state their name and on whose behalf they are speaking (if anyone).

Written Comments. Written comments regarding the proposed rules may be submitted instead of, or in addition to, oral comments until March 24, 2023 at 5:00 p.m. Written comments may be sent to J. Christopher Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Chris.Gee@TexasAgriculture.gov.

Auxiliary Aids or Services for Persons with a Disability. If you would like to attend the meeting and require auxiliary aids or services, please notify the Texas Department of Agriculture at least 72 hours before the meeting, so that appropriate arrangements can be made. Requests may be made by telephone to Christina Osborn, Director for Consumer Product Protection at (512) 463-5706.

For more information regarding this stakeholder meeting, please contact Christina Osborn, Director for Consumer Product Protection, Texas Department of Agriculture, at P.O. Box 12847, Austin, Texas 78711 or (512) 463-5706.

TRD-202300852

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: February 22, 2023

◆ ◆ ◆
Office of the Attorney General

Request for Applications (RFA) for the Other Victim Assistance Grant (OVAG) Program

The Office of the Attorney General (OAG) is soliciting local and statewide applications for projects that provide victim-related services or assistance. The purpose of the OAG OVAG program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

Applicable Funding Source for OVAG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, non-profit agencies with 26 U.S.C. 501(c)(3) status and state agencies, including universities, are eligible to apply.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

--First Name

--Last Name

--Email Address (*It is highly recommended to use a generic organization email address if available*)

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$20,000 per fiscal year. The maximum amount for a local program is \$49,500 per fiscal year. The maximum amount for a statewide program is \$150,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2023 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Information: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202300839

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 22, 2023

◆ ◆ ◆
Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS)-State Program

The Office of the Attorney General (OAG) is soliciting applications from programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG

makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Sexual Assault Programs as defined by Texas Government Code, Section 420.003 and as stated in the Application Kit.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

--First Name

--Last Name

--Email Address (*It is highly recommended to use a generic organization email address if available*)

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding for all programs is \$125,000 per fiscal year. The maximum amounts of funding are as follows: new sexual assault program \$125,000 per fiscal year; and currently funded sexual assault programs \$735,000 per fiscal year.

Regardless of the maximums stated above, a currently funded sexual assault program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in fiscal year (FY) 2023. The award amount is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

A currently funded program is one that has an active grant contract for FY 2023. Previous grantees that were not funded in FY 2023, or that de-obligated their contracts in FY 2023, will be considered new Applicants for this Application Kit.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2023 through

August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Information: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202300840

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 22, 2023



Request for Applications (RFA) for the Victim Coordinator and Liaison Grant (VCLG) Program

The Office of the Attorney General (OAG) is soliciting applications for projects that provide victim-related services or assistance. The purpose of the OAG VCLG program is to fund the mandated positions described in the Texas Code of Criminal Procedure, Article 56A.201 - 56A.204, specifically Victim Assistance Coordinators (VAC) in prosecutor offices and Crime Victim Liaisons in law enforcement agencies.

Applicable Funding Source for VCLG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund a Victim Assistance Coordinator (VAC) position. A local law enforcement agency, defined as the police department of a municipality or the sheriff's department of any county, may apply for a grant to fund a Crime Victim Liaison (CVL) position.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submit-

ted by an ineligible applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

--First Name

--Last Name

--Email Address (*It is highly recommended to use a generic organization email address if available*)

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$20,000 per fiscal year. The maximum amount for a program is \$49,500 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2023 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202300842

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 22, 2023



State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed
Rule Changes, Rules 1.08, 5.01, 5.05, 8.05, Texas Disciplinary
Rules of Professional Conduct

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 1.08. Conflict of Interest: Prohibited Transactions

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrd@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdrd/participate.

Current sections 1.08(b)-(j) would not be amended and would remain in effect. The CDRR proposes additional comments to Rule 1.08 and proposes renumbering of the current comments.

Proposed Rule (Redline Version)

Rule 1.08. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client, or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless:

(1) the terms of the transaction or acquisition are fair and reasonable to the client, and are fully disclosed and transmitted to the client in a writing that can be reasonably understood by the client;

(2) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(3) the client thereafter provides informed consent in writing to the terms of the transaction or acquisition, and to the lawyer's role in it, including whether the lawyer is representing the client in the transaction.

Comment:

Transactions between Client and Lawyer

Business Transactions between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and

lawyer, which are governed by Rule 1.04, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that in many cases the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.00(i).⁴

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.06. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.06 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement

for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

[No Proposed Changes to Current Comments 4-8, Which Are Proposed to Be Renumbered as Comments 5-9.]

Proposed Rule (Clean Version)

Rule 1.08. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client, or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless:

(1) the terms of the transaction or acquisition are fair and reasonable to the client, and are fully disclosed and transmitted to the client in a writing that can be reasonably understood by the client;

(2) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(3) the client thereafter provides informed consent in writing to the terms of the transaction or acquisition, and to the lawyer's role in it, including whether the lawyer is representing the client in the transaction.

Comment:

Transactions between Client and Lawyer

Business Transactions between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. It also applies to lawyers purchasing property from estates they represent.

It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.04, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that in many cases the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.00(j).¹

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.06. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.06 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

[No Proposed Changes to Current Comments 4-8, Which Are Proposed to Be Renumbered as Comments 5-9.] **TSJ**

NOTES

¹ The Committee on Disciplinary Rules and Referenda recommended proposed Rule 1.00, TDRPC, to the State Bar of Texas Board of Directors for review and consideration. The board approved the proposed rule and shall petition the Texas Supreme Court to order a vote by State Bar members.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule (Redline Version)

Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer

A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:

(a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or

(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these Rules.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

1. Rule 5.01 conforms to the general principle that a lawyer is not vicariously subjected to discipline for the misconduct of another person. Under Rule 8.04, a lawyer is subject to discipline if the lawyer knowingly assists or induces another to violate these rules.

Rule 5.01(a) additionally provides that a partner or supervising lawyer is subject to discipline for ordering or encouraging another lawyer's violation of these rules. Moreover, a partner or supervising lawyer is in a position of authority over the work of other lawyers and the partner or supervising lawyer may be disciplined for permitting another lawyer to violate these rules.

2. Rule 5.01(b) likewise is concerned with the lawyer who is in a position of authority over another lawyer and who knows that the other lawyer has committed a violation of a rule of professional conduct. A partner in a law firm, the general counsel of a government agency's legal department, or a lawyer having direct supervisory authority over specific legal work by another lawyer, occupies the position of authority contemplated by Rule 5.01(b).

3. Whether a lawyer has "direct supervisory authority over the other lawyer" in particular circumstances is a question of fact. In some instances, a senior associate may be a supervising attorney.

4. The duty imposed upon the partner or other authoritative lawyer by Rule 5.01(b) is to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's known violation. Appropriate remedial action by a partner or other supervisory lawyer would depend on many factors, such as the immediacy of the partner's or supervisory lawyer's knowledge and involvement, the nature of the action that can reasonably be expected to avoid or mitigate injurious consequences, and the seriousness of the anticipated consequences. In some circumstances, it may be sufficient for a junior partner to refer the ethical problem directly to a designated senior partner or a management committee. A lawyer supervising a specific legal matter may be required to intervene more directly. For example, if a supervising lawyer knows that a supervised lawyer misrepresented a matter to an opposing party in negotiation, the supervisor as well as the other lawyer may be required by Rule 5.01(b) to correct the resulting misapprehension.

5. Thus, neither Rule 5.01(a) nor Rule 5.01(b) visits vicarious disciplinary liability upon the lawyer in a position of authority. Rather, the lawyer in such authoritative position is exposed to discipline only for his or her own knowing actions or failures to act. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

6. Wholly aside from the dictates of these rules for discipline, a lawyer in a position of authority in a firm or government agency or

~~over another lawyer should feel a moral compunction to make reasonable efforts to ensure that the office, firm, or agency has in effect appropriate procedural measures giving reasonable assurance that all lawyers in the office conform to these rules. This moral obligation, although not required by these rules, should fall also upon lawyers who have intermediate managerial responsibilities in the law department of an organization or government agency.~~

~~7. The measures that should be undertaken to give such reasonable assurance may depend on the structure of the firm or organization and upon the nature of the legal work performed. In a small firm, informal supervision and an occasional admonition ordinarily will suffice. In a large firm, or in practice situations where intensely difficult ethical problems frequently arise, more elaborate procedures may be called for in order to give such assurance. Obviously, the ethical atmosphere of a firm influences the conduct of all of its lawyers. Lawyers may rely also on continuing legal education in professional ethics to guard against unintentional misconduct by members of their firm or organization.~~

[1] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Disciplinary Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm, whether it has more than one office location or practices in more than one jurisdiction, or whether the firm or its partners engage in any ancillary business.

[3] A partner, shareholder or other lawyer in a law firm who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm would not necessarily be required to promulgate firm-wide policies intended to reasonably assure that the law firm's lawyers comply with these rules. However, a lawyer remains responsible to take corrective steps if the lawyer knows or reasonably should know that the delegated body or person is not providing or implementing measures as required by this rule.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.04(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory

authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.04(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.02.

Proposed Rule (Clean Version)

Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these rules.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

[1] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and

procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Disciplinary Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm, whether it has more than one office location or practices in more than one jurisdiction, or whether the firm or its partners engage in any ancillary business.

[3] A partner, shareholder or other lawyer in a law firm who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm would not necessarily be required to promulgate firm-wide policies intended to reasonably assure that the law firm's lawyers comply with these rules. However, a lawyer remains responsible to take corrective steps if the lawyer knows or reasonably should know that the delegated body or person is not providing or implementing measures as required by this rule.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.04(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer

having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.04(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.02. **TBJ**

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at [texasbar.com/CDRR](https://www.texasbar.com/CDRR) or by email to cdr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to [texasbar.com/cdr/participate](https://www.texasbar.com/cdr/participate).

Proposed Rule (Redline Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) ~~(a)~~ practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) ~~(b)~~ assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.
- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] ~~Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that "the practice of law" is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.~~

[3] ~~Rule 5.05 does not attempt to define what constitutes the "unauthorized practice of law" but leaves the definition to judicial development. Judicial development of the concept of "law practice" should emphasize that the concept is broad enough but only broad enough to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.~~

[4] ~~Paragraph (b) of Rule 5.05. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them. So long as the lawyer supervises the delegated~~

~~work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03. Likewise, paragraph (b) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.~~

~~[5] Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice. This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.~~

Proposed Rule (Clean Version)

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

- (a) A lawyer shall not:
- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.
- (b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal

services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

- (d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:
- (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
 - (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
 - (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

[1] Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Judicial development of the concept of "law practice" should be broad enough to cover all situations where there is rendition of legal services for others that calls for the professional judgment of a lawyer and where there is a need for the protections afforded by the regulation of the legal profession.

[3] Competent professional judgment is the product of a trained familiarity with law and legal processes. In representing a client with respect to matters involving the law of other jurisdictions where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in the other jurisdiction.

[4] This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, provided that the lawyer supervises and takes responsibility for the work, and maintains a direct relationship with the client.

[5] This rule also does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law, such as claims adjusters, employees of financial institutions, social workers, abstractors, police officers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law. **TBJ**

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 8.05. Jurisdiction

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through April 13, 2023. Comments can be submitted at [texasbar.com/CDRR](https://www.texasbar.com/CDRR) or by email to cdr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to [texasbar.com/cdr/participate](https://www.texasbar.com/cdr/participate).

Proposed Rule (Redline Version)

Rule 8.05. Jurisdiction

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined here for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Comment:

[1] This Rule describes those lawyers who are subject to the disciplinary authority of this state. It ~~includes~~ encompasses all lawyers licensed to practice here, ~~as well as~~ including lawyers admitted specially for a particular proceeding, as well as lawyers not admitted to practice in this state who provide or offer any legal services in this jurisdiction. This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure.

~~[2] In modern practice lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction. See Rule 5.05. It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.05 appoints an official to be designated by this court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.~~

~~[3] If the rules of professional conduct of this state and that other jurisdiction differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction and these jurisdictions impose conflicting obligations. A related problem arises with respect to practice before a federal tribunal, where the general authority of the state to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them. In such cases, this state will not impose discipline for conduct arising in connection with the practice of law in another jurisdiction or resulting in lawyer discipline in another jurisdiction unless that conduct constitutes professional misconduct under Rule 8.04. Lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is improper, it may constitute grounds for criminal prosecution or discipline in that jurisdiction based on unauthorized practice of law. See Rule 5.05.~~

~~[4] Normally, discipline will not be imposed in this state for conduct occurring solely in another jurisdiction or judicial system and authorized by the rules of professional conduct applicable thereto, even if that conduct would violate these Rules. This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure.~~

Proposed Rule (Clean Version)

Rule 8.05. Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Comment:

[1] This Rule describes those lawyers who are subject to the disciplinary authority of this state. It encompasses all lawyers licensed to practice here, including lawyers admitted specially for a particular proceeding, as well as lawyers not admitted to practice in this state who provide or offer any legal services in this jurisdiction.

[2] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of

this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.05 appoints an official to be designated by this court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

[3] Lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is improper, it may constitute grounds for criminal prosecution or discipline in that jurisdiction based on unauthorized practice of law. See Rule 5.05.

[4] This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure. **TBJ**

TRD-202300812

Andrea Low

Disciplinary Rules and Referenda Attorney

State Bar of Texas

Filed: February 17, 2023



Capital Area Rural Transportation System

CARTS Request for Proposal

Capital Area Rural Transportation System (CARTS) invites qualified proposers to submit proposals for the redesign/redevelopment of the existing CARTS website. An RFP will be available for download on the CARTS Website beginning at 5:00 p.m., Tuesday, February 21, 2023. Go to: <http://ridecarts.weebly.com/procurement.html>, and follow the instructions.

The following are the required timeframes for the procurement:

Release of RFP: February 21, 2023

Responses due at 2:00 p.m.: March 21, 2023

Interviews (if necessary): March 29, 2023

Award Anticipated: April 4, 2023

Work Begins: May 1, 2023

Website Launch: August 1, 2023

TRD-202300802

David L. Marsh

CARTS General Manager

Capital Area Rural Transportation System

Filed: February 17, 2023



Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil--January 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period January 2023 is \$54.70 per barrel for the three-month period beginning on October 1, 2022, and ending December 31, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of January 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period January 2023 is \$3.78 per mcf for the three-month period beginning on October 1, 2022, and ending December 31, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2023, from a qualified low-producing well, is not eligible for credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2023 is \$78.16 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2023, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2023 is \$3.42 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2023, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Bursleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202300776
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: February 16, 2023



Notice of Funds Availability - March 2023

The Texas Broadband Development Office (BDO) gives notice of its intent to solicit an initial round of grant proposals as part of the Bringing Online Opportunities to Texas (BOOT) Program for the purpose of funding eligible broadband infrastructure projects designed to deliver, upon completion, broadband service that reliably meets or exceeds symmetrical speeds of 100 megabits per second (Mbps) to directly enable work, education, and health monitoring, including remote options, to eligible areas throughout the State. Through the BDO, the State of Texas has been allocated \$363.8 million through the American Rescue Plan Act's Coronavirus Capital Projects Fund. This program is administered by the U.S. Department of the Treasury to carry out critical Capital Projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19). The funds allocated to Texas shall be distributed by the BDO through a multi-round competitive grant process. This first round of funds covered by this notice will be \$120,000,000.00.

A Notice of Funds Availability (NOFA) outlining the grant requirements and criteria will be published on the *Texas.gov eGrants* and *TXS-martBuy* websites on March 6, 2023. Interested parties are encouraged to carefully review the NOFA and submit proposals during the application acceptance period identified in the NOFA.

For more information regarding this opportunity please contact BDO by email at broadband@cpa.texas.gov

TRD-202300849

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Filed: February 22, 2023



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/27/23 - 03/05/23 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/27/23 - 03/05/23 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/23 - 03/31/23 is 7.75% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/23 - 03/31/23 is 7.75% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202300835

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 21, 2023



Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2022 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA Part B). The Texas Education Agency (TEA) is inviting public comment on its Proposed State Application under IDEA Part B. The annual grant application provides assurances that the state's policies and procedures in effect are consistent with the federal requirements to ensure that a free appropriate public education is made available to all children with a disability from 3 to 21 years of age, including children who have been suspended or expelled from school. 34 Code of Federal Regulations §300.165 requires that states conduct public hearings, ensure adequate notice of those hearings, and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures.

Availability of the State Application. The Proposed State Application is available on the TEA website at <https://tea.texas.gov/academics/special-student-populations/special-education/programs-and-services/annual-state-application-under-idea-part-b-and-idea-eligibility-documentation/>. Instructions for submitting public comments are available from the same site. The Proposed State Application will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application at the William B. Travis location should contact the TEA Division of Special Education at (512) 463-9414.

Procedures for Submitting Written Comments. TEA will accept written comments pertaining to the Proposed State Application by mail to the TEA, Division of Special Education Programs, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to spedruler@tea.texas.gov.

Participation in Public Hearings. TEA will provide individuals with opportunities to testify on the Proposed State Application and the state's policies and procedures for implementing IDEA Part B on April 6 and 7, 2023, between 8:30 a.m. and 11:30 a.m. remotely via Zoom Meeting at the following links: April 6th <https://zoom.us/j/95118789808>; April 7th <https://zoom.us/j/97811920181>. The public is invited to make comments at one or both meetings. Parties interested in testifying are encouraged to also include written testimony. Public hearing information is available on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147493812>.

Timetable for Submitting the State Application. After review and consideration of all public comments, TEA will make necessary or appropriate modifications and will submit the State Application to the U.S. Department of Education on or before May 19, 2023.

For more information, contact the TEA Division of Special Education by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at spedruler@tea.texas.gov.

Issued in Austin, Texas, on February 22, 2023.

TRD-202300854

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 22, 2023

Texas Board of Professional Engineers and Land Surveyors

Draft Guidelines for Applicants, Licensees, and Registrants with Criminal Convictions

These draft guidelines are issued by the Texas Board of Professional Engineers and Land Surveyors (TBPELS) pursuant to the Texas Occupations Code, § 53.025(a) for comment and feedback. The draft guidelines will replace the current guidelines available on the TBPELS website at <https://pels.texas.gov/recordcheck.html>. Comments should be sent to rules@pels.texas.gov by April 3, 2023.

These guidelines describe the process by which TBPELS determines whether a criminal conviction renders an applicant, licensee, or registrant an unsuitable candidate for the license or registration, or whether a conviction warrants revocation or suspension of a license or registration previously granted. These guidelines present the general factors that are considered in all cases, and also the reasons why particular crimes are considered to relate to each type of license and registration issued by TBPELS.

I. Agency's process

Applications for licensure as a Professional Engineer (PE) and registration as a Registered Professional Land Surveyor (RPLS) require the applicant to provide information about criminal convictions. TBPELS's Licensing and Registration Department performs a criminal background check on each Professional Engineer (PE) and Registered Professional Land Surveyor (RPLS) application filed. This background check is done through the Criminal History Record Check (CHRC) process utilizing fingerprint background checks. (LINK) The CHRC provides criminal background information from both the Texas Department of Public Safety (DPS) system as well as the Federal Bureau of Investigation (FBI).

If the application materials or the CHRC check reveals a conviction that warrants additional review, licensing staff will review the conviction against the criminal history policy and follow the processes outlined in Board Rules §133.85 for PE applicants and §134.85 for RPLS applicants.

If a conviction meets the requirements of the guidelines, pursuant to §133.85 and §134.85 (relating to - Additional Review of and Action on Applications) applicants will be referred to the Licensing Committee. The Licensing Committee may obtain additional information and make recommendations for final action. The Licensing Committee may consider applications subject to Occupations Code Ch. 53 and cases in which any of the following conditions apply:

1. Any criminal convictions discovered by staff through the CHRC that were not reported in the application materials submitted by the applicant.
2. The direct relationship of the offense to the duties and responsibilities of a Professional Engineer or Registered Professional Land Surveyor in Texas.

3. Multiple misdemeanor or felony judgments that occurred within 10 years of the date of application that indicate a pattern of unethical behavior.

4. Any felony judgement related to the duties and responsibilities of a Professional Engineer or Registered Professional Land Surveyor for which the date of completion and resolution of the terms is within 10 years of the date of application.

If a person received a judgment or a deferred adjudication and has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license, then the board will follow Occupations Code 53.021(d). An application may be placed in a hold status and processing may resume after the court requirements have been completed and the application updated.

No currently incarcerated individual is eligible to obtain or renew a license or registration. A person's license or registration will be automatically revoked by operation of law upon the person's imprisonment following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

For individuals who are already licensed or registered when TBPELS discovers a criminal conviction, the process is essentially the same as that described above. A conviction discovered by licensing staff, Compliance & Enforcement staff, or any other TBPELS employee is referred to the Compliance & Enforcement Division. If the Compliance & Enforcement Department finds, after investigation, that the conviction warrants taking action on the license or registration, a proposed Notice of Violation letter and Consent Order is issued to the license or registration holder. Depending on the response to the Notice of Violation and Consent Order, the processes outlined in Chapter 139, Subchapter C, relating to Enforcement Proceedings are followed. The Board ultimately decides whether any action should be taken against the license or registration.

Subject to the requirements of Texas Occupations Code Chapter 53, Subchapter D, a person who has reason to believe that the person may be ineligible for a license, due to conviction or deferred adjudication for a felony or misdemeanor offense, may request the Board to issue a criminal history evaluation letter regarding the prospective applicant's potential eligibility for a license. The person may request such a letter, in a format prescribed by the Board, before applying for a license, enrolling in an educational program that prepares a person for initial license or applying to take a licensing exam. The request must state the basis for the person's potential ineligibility. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for a license.

II. Responsibilities of the applicant

The applicant has the responsibility, to the extent possible, to obtain and provide to the agency a summary of the events related to the conviction, legal documents related to the conviction, any documents related to the disposition and resolution of the conviction, and other supporting documents that may be required by the board.

III. General factors

The Board may suspend or revoke a license, disqualify a person from receiving a license or registration, or deny to a person the opportunity to take a licensing or registration examination on the grounds that a person has been convicted of an offense, as addressed in Chapter 53 of the Texas Occupations Code.

In deciding whether a criminal conviction should be grounds to deny, revoke, or take other enforcement action on a license or registration,

the following factors are considered in all cases to determine whether the conviction directly relates to the duties and responsibilities of engineering or land surveying:

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

In determining the fitness of an applicant or license holder who has been convicted of a crime, the board will also consider the following in deciding whether to take board action:

- the extent and nature of the person's past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of rehabilitation or rehabilitative effort while incarcerated or following release;
- evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- other evidence of the person's fitness, including letters of recommendation.

IV. Relation of crimes to specific licenses and registrations issued by TBPELS

These guidelines reflect the most common or well-known categories of crimes, and their relation to specific license types. These guidelines are not intended to be an exclusive listing, i.e. they do not prohibit TBPELS from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed above, TBPELS may find that a conviction not described herein renders a person unfit to hold a license.

In addition to the specific crimes listed below, multiple violations of any criminal statute should always be reviewed, for any license or registration. Multiple violations may reflect a pattern of behavior that renders the applicant unfit or not suited for the license. The board may give extra weight to multiple misdemeanor or felony convictions if any one of them occurred within 10 years of the date of application as they indicate a pattern of unethical behavior, lack of character, or suitability for licensure or registration.

A. ENGINEERS

Pursuant to Texas Occupations Code §53.025(a), the Board considers that the following crimes, which involve a lack of honesty, integrity, fidelity, or the exercise of good judgement, and other crimes not listed here, that involve the above-listed characteristics, directly relate to the practice of engineering due to the adverse impact each of these crimes has on the special trust and ethical duties a Professional Engineer owes to the client and the public.

1. Any crime that involves a disregard for the health, safety, or welfare of the general public or individuals.

Reason: Licensees are directly involved with buildings, infrastructure, and other systems in the built environment and entrusted with safe and competent engineering practice. Unsafe engineering can have a significant impact on health, safety, and welfare of the public.

2. Violent crime against a person, including such as homicide, kidnapping, assault, crimes involving prohibited sexual conduct, or crimes involving children or elderly persons as victims.

Reason: Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior. A person with a predisposition for a violent response would pose a risk to the public.

3. Any crime of which theft, fraud, or deceit is an essential element or crimes involving financial or other loss for a client(s) or the public, including crimes against property such as theft or burglary.

Reason: Licensees have the means and the opportunity to practice deceit, fraud, and misrepresentation related to the need for designs, reports, estimates, and services. Licensees have access to private residences and businesses, where they may come into direct contact with unattended property. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

4. Any crime related to property violations or trespassing.

Reason: A PE often has access to private or public property and a surveyor needs to follow all applicable laws, rules, and regulations related to access and activities on the property of others.

5. Any crime that demonstrates a lack of professional judgment expected of a Professional Engineer, including a crime involving drugs or alcohol.

Reason: Licensees need to have the trust of the public and honesty, integrity, fidelity, or the exercise of good judgement are critical to the ethical practice of professional engineering. Professional judgement and ability to follow laws, rules, codes, and ordinances is an expectation of the public.

B. SURVEYORS

Pursuant to Texas Occupations Code §53.025(a), the Board considers that the following crimes, which involve a lack of honesty, integrity, fidelity, or the exercise of good judgement, and other crimes not listed here, that involve the above-listed characteristics, directly relate to the practice of land surveying due to the adverse impact each of these crimes has on the special trust and ethical duties a Registered Professional Land Surveyor owes to the client and the public.

1. Any crime that involves a disregard for the health, safety, or welfare of the general public or individuals.

Reason: Registrants are directly involved with property, infrastructure, and other systems in the built environment and entrusted with safe and competent land surveying practice. Incorrect or unsafe surveying can have a significant impact on health, safety, welfare, and property of the public.

2. Violent crime against a person, including such as homicide, kidnapping, assault, crimes involving prohibited sexual conduct, or crimes involving children or elderly persons as victims.

Reason: Registrants have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior. A person with a predisposition for a violent response would pose a risk to the public.

3. Any crime of which theft, fraud, or deceit is an essential element or crimes involving financial or other loss for a client(s) or the public, including crimes against property such as theft or burglary.

Reason: Registrants have the means and the opportunity to practice deceit, fraud, and misrepresentation related to the need for surveys, plats, reports, and services. Registrants have access to private property, residences, and businesses, where they may come into direct contact with unattended property. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

4. Any crime related to property violations or trespassing.

Reason: An RPLS often has access to private or public property and a surveyor needs to follow all applicable laws, rules, and regulations related to access and activities on the property of others.

5. Any crime that demonstrates a lack of professional judgment expected of a Registered Professional Land Surveyor, including a crime involving drugs or alcohol.

Reason: Registrants need to have the trust of the public and honesty, integrity, fidelity, or the exercise of good judgement are critical to the ethical practice of professional land surveying. Professional judgement and ability to follow laws, rules, codes, and ordinances is an expectation of the public.

TRD-202300825

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Filed: February 17, 2023



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 3, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **April 3, 2023**. 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: AREPET SAND VENTURES, INCORPORATED; DOCKET NUMBER: 2022-0597-AIR-E; IDENTIFIER: RN106082373; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fractionation sand drying and handling facility; RULES VIOLATED: 30 TAC §106.145(3), Permit by Rule Registration Number 94910, and Texas Health and Safety Code (THSC), §382.085(b), by failing to water, treat with dust-suppressant chemicals, oil, or pave and clean all permanent in-plant roads and vehicle work areas to achieve maximum control of dust emissions; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Austwell; DOCKET NUMBER: 2021-0542-MWD-E; IDENTIFIER: RN101608347; LOCATION: Austwell, Refugio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ001117001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (11)(B) and §319.7(a) and TPDES Permit Number WQ001117001, Monitoring and Reporting Requirements Number 3, by failing to maintain monitoring and reporting records at the facility; 30 TAC §305.125(1) and (12), and TPDES Permit Number WQ001117001, Permit Conditions Number 1.a, by failing to accurately report monitoring activities; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ001117001, Section II, F. Reporting Requirements, by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; and 30 TAC §317.4(a)(8), by failing to test the reduced-pressure backflow assembly annually; PENALTY: \$17,687; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$14,150; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: IACX Rock Creek LLC; DOCKET NUMBER: 2021-0428-AIR-E; IDENTIFIER: RN100220052; LOCATION: Dumas, Moore County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 83193 and PSDTX1104, Special Conditions Number 1, Federal Operating Permit (FOP) Number O2568, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O3586, GTC and STC Number 2.F, and 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; and 30 TAC §101.201(c) and §122.143(4), FOP Number O2568, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: \$43,541; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: KEETYO Enterprises, Incorporated; DOCKET NUMBER: 2022-1355-AIR-E; IDENTIFIER: RN104276365; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: sign manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Poly-America, L.P.; DOCKET NUMBER: 2021-0625-AIR-E; IDENTIFIER: RN100641752; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: plastic manufacturing plant; RULES VIOLATED: 30 TAC §101.201(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and THSC, §382.085(a), by failing to prevent unauthorized emissions; PENALTY: \$9,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,875; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: QW Transport, LLC dba American Petrofina; DOCKET NUMBER: 2022-0867-PST-E; IDENTIFIER: RN100577683; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: \$43,059; ENFORCEMENT COORDINATOR: Carolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Rain Water Supply Corporation; DOCKET NUMBER: 2022-1211-UTL-E; IDENTIFIER: RN101190775; LOCATION: Granbury, Hood County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: UMBARGER COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1498-UTL-E; IDENTIFIER: RN101451268; LOCATION: Canyon, Randall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$665; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: VOCAR Transportation Services, L.L.C.; DOCKET NUMBER: 2022-1107-PST-E; IDENTIFIER: RN102785409; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ

delivery certificate before accepting delivery of a regulated substance into the regulated UST; 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, and failing to monitor the piping associated with the UST system installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$33,895; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Weatherford Aerospace, LLC; DOCKET NUMBER: 2022-0686-AIR-E; IDENTIFIER: RN100218734; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: an aerospace manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1618, Special Conditions Number 6.F., Federal Operating Permit (FOP) Number O1470, General Terms and Conditions (GTC), and Special Terms and Conditions Number 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the basicity of the scrubbing solutions; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1470, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, and failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$57,125; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202300827
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 21, 2023



Amended Notice of Hearing City of Dripping Springs
SOAH Docket No. 582-23-09218 TCEQ Docket No.
2022-0940-MWD TCEQ Permit No. WQ0014488001
This Amended Notice of Hearing Changes the Date of the
Preliminary Hearing.

APPLICATION. The City of Dripping Springs, P.O. Box 384, Dripping Springs, Texas 78620, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TCEQ Permit No. WQ0014488001 to authorize the addition of a subsurface drip irrigation site of 13.8 acres with a flow volume not to exceed a daily average flow of 60,000 gallons per day in the final phase and the addition of a surface irrigation site of 17 acres with a flow volume not to exceed a daily average flow of 50,000 gallons per day in the final phase, an increase in the total land application acreage from 113.53 acres to 144.33 acres, and an increase in the total wastewater treatment facility flow volume in the final phase to a volume not to exceed a daily average flow from 319,000 gallons per day to 429,000 gallons per day. The existing permit authorizes the disposal of treated wastewater at a volume not to exceed a daily average flow of 133,000 gallons per day via subsurface area drip irrigation of 30.53 acres of public access land and the disposal of treated wastewater at a volume not to exceed a daily average flow not to exceed 186,000 gallons via surface irrigation of 83 acres of public access land. This permit will not authorize a discharge

of pollutants into water in the state. TCEQ received this application on February 16, 2018.

The wastewater treatment facility and on-site subsurface disposal site are located approximately 0.55 miles east of the intersection of Ranch Road 12 and Farm-to-Market Road 150, as measured along Farm-to-Market Road 150, and from that point, approximately 1,110 feet south of Farm-to-Market Road 150, in Hays County. An existing offsite subsurface disposal area is located approximately 0.44 mile south of the intersection of U.S. Highway 290 and Ranch Road 12, as measured along Ranch Road 12, and from that point, approximately 1,280 feet east of Ranch Road 12, in Hays County. Another existing offsite surface disposal area is located approximately 1.5 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, and from that point approximately 1,000 feet west of Ranch Road 12 in Hays County. The proposed subsurface disposal area will be located approximately 0.31 mile north of the intersection of U.S. Highway 290 and Ranch Road 12, along Ranch Road 12, and, from that point, approximately 0.26 mile west of Ranch Road 12, in Hays County. The proposed surface disposal site will be located approximately 1.65 miles west and 0.65 mile south of the intersection of U.S. Highway 290 and Ranch Road 12, in Hays County. The wastewater treatment facility and on-site subsurface disposal site are located in Hays County, Texas 78619. All other disposal sites are located in Hays County, Texas 78620. The wastewater treatment facility and the disposal sites are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin. 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=-98.080277%2C30.154166&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 Dripping Springs City Hall, 511 Mercer Street, Dripping Springs, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - March 29, 2023

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 077 0640

Password: TCEQ928

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 077 0640

Password: 9131563

Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 15, 2022. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

Further information may also be obtained from The City of Dripping Springs at the address stated above or by calling Mr. Robert Callegari, P.E., CMA Engineering, Inc. at (512) 432-1000.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: February 15, 2023

TRD-202300844

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2023



Enforcement Order

An agreed order was adopted regarding L. Guerrero & Sons Ready-Mix Company, Docket No. 2020-0424-WQ-E on February 21, 2023, assessing \$6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202300843

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2023



Enforcement Orders

An agreed order was adopted regarding Petrus Adrianus Boekhorst dba Petal Dairy, Docket No. 2019-0962-AGR-E on February 22, 2023 assessing \$52,963 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GEO SPECIALTY CHEMICALS, INC., Docket No. 2019-1322-IWD-E on February 22, 2023 assessing \$145,412 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Keagle, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Amanda Hahn, Docket No. 2019-1401-MSW-E on February 22, 2023 assessing \$1,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ingleside, Docket No. 2020-0469-MWD-E on February 22, 2023 assessing \$92,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Waelder, Docket No. 2020-1154-MWD-E on February 22, 2023 assessing \$16,500 in administrative penalties with \$3,300 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Michael Hughes, Docket No. 2021-0961-MLM-E on February 22, 2023 assessing \$37,430 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Saeb Kutob dba ARP FOOD STORE, Docket No. 2021-1113-PST-E on February 22, 2023 assessing \$12,686 in administrative penalties with \$2,537 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FOOTHILLS MOBILE HOME RANCH, INC., Docket No. 2021-0276-PWS-E on February 22, 2023 assessing \$2,243 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2022-0562-AIR-E on February 22, 2023 assessing \$31,200 in administrative penalties with \$6,240 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Betts 1 Stop, Inc. dba Alamo Drive Inn, Docket No. 2022-0613-PST-E on February 22, 2023 assessing \$18,026 in administrative penalties with \$3,605 deferred. Informa-

tion concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Longhorn Junction Owner (TX), LP, Docket No. 2022-0694-EAQ-E on February 22, 2023 assessing \$22,500 in administrative penalties with \$4,500 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202300850
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 22, 2023



Notice of Correction to Agreed Order Number 9

In the January 6, 2023, issue of the *Texas Register* (48 TexReg 61), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for UTXL Manufacturing LLC; Docket Number 2021-1384-AIR-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "UTLX Manufacturing LLC."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202300828
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 21, 2023



Notice of District Petition

Notice issued February 16, 2023

TCEQ Internal Control No. D-12272022-064; SA Given to Fly, L.P. (Petitioner) filed a petition for creation of Guadalupe County Municipal Utility District No.10 (District) of Guadalupe County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 141.823 acres located within Guadalupe County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of City of Marion ("City"). The petition further states that the requested name of the proposed District is "Guadalupe County Municipal Utility District No. 8 (or next available numerical designation)", the next available numerical designation at the time of filing the petition was Guadalupe County Municipal Utility District No. 10, which is reflected in this notice. The petition further states that the proposed District will: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or com-

posite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants and enterprises as shall be consonant with all of the purposes for which the proposed District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$17,165,000 (\$11,415,000 for water, wastewater, and drainage plus \$5,750,000 for roads). The Property is located within the extraterritorial jurisdiction of the City of Marion, Guadalupe County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202300847

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 22, 2023



Notice of District Petition

Notice issued February 22, 2023

TCEQ Internal Control No. D-01092023-007; TCCI Range-Mead 2021, LLC, a Texas limited liability company, and Hines Acquisitions, LLC, a Delaware limited liability company, (Petitioners) filed a petition for creation of Madera Municipal Utility District No. 1 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Veritex Community Bank, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 539.203 acres located within Denton County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Justin. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, and road facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$58,000,000 (\$43,000,000 for water, wastewater, and drainage and \$15,000,000 for roads). The Property is located within the extraterritorial jurisdiction of the City of Justin, Denton County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioners submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202300848

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2023



Notice of Hearing Ellis Ranch Municipal Utility District
No. 1 SOAH Docket No. 582-23-11658 TCEQ Docket No.
2022-1157-DIS TCEQ Internal Control No. D-03212022-036

PETITION.

GRBK Edgewood, LLC, a Texas limited liability company (Petitioner), filed a petition for the creation of Ellis Ranch Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 571.147 acres located within Ellis County, Texas; and (3) the land within the proposed District is located partially within the extraterritorial jurisdiction of the City of Waxahachie (City), partially within the unincorporated area of Ellis County, and outside the corporate limits or extraterritorial jurisdiction of any other city or town. Additionally, information provided indicates that there are no lienholders on the property to be included in the proposed District.

The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct,

maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$67,335,000 (\$48,160,000 for water, wastewater, and drainage plus \$19,175,000 for roads).

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - March 21, 2023

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 643 2463

Password: TCEQ658

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 643 2463

Password: 2254249

Visit the SOAH website for registration at: <http://www.soah.texas.gov/>

or call SOAH at 512-475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapters 49 and 54, Texas Water Code; Chapter 395, Texas Local Government Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 293; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. To participate in the hearing as a party, you must attend the hearing and show you would be affected by the petition in a way not common to members of the general public.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of the Public Interest Counsel (MC 103), P.O. Box 13087, Austin, Texas 78711-3087. For additional information, contact the TCEQ Water Supply Division, Districts Section (MC 152), P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-4691. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: February 17, 2023

TRD-202300846

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2023



Notice of Hearing TCEQ Docket No. 2023-0256-DIS TCEQ Internal Control No. D-10182022-031

PETITION. Beckendorf Columbus Farooqi, LLC, a Texas limited liability company, Austin County NKFS, LLC, a Texas limited liability company, and Zashko Fuels, Inc., a Texas corporation (Petitioners) have filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of Austin County Municipal Management District No. 1 (District). The TCEQ will conduct this hearing under the authority of Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at:

9:30 a.m., Friday, March 31, 2023

Building E, Room 201S

12100 Park 35 Circle

Austin, Texas

Due to the ongoing pandemic, the agenda meeting may be held in person in Room 201S of Building E at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas, virtually, or both in person and virtually. To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at: https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm_agendas.html eight days before the Agenda.

The proposed District will contain approximately 291.53 acres of land within Austin County, Texas. None of the land to be include in the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The territory to be included in the proposed District is set forth in a metes and bounds description and is depicted in the vicinity map designated as Exhibit "A," which is attached to this document. The Petition states that the creation of the proposed District would be a benefit to the land within its boundary.

HEARING. As required by the Texas Local Government Code §§ 375.023 and 375.024 and Title 30 of the Texas Administrative Code §293.12(g)(2)(A), the above hearing regarding this application will be held no earlier than 31 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the petition. Each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue.

At the hearing, pursuant to Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; and Chapter 293 of Title 30 of the Texas Administrative Code, the TCEQ will determine if creating Austin County Municipal Management District No. 1 would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed creation, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

INFORMATION. For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact James Walker of the Districts Creation Review Team at (512) 239-2532. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

Si desea información en español, puede llamar al (512) 239-0200.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ External Relations Division at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing.

Issued: February 17, 2023

TRD-202300846

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2023



Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ, Agency, 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 **April 3, 2023**. 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 April 3, 2023**. The commission's 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: F.S. DEVELOPMENT, LTD.; DOCKET NUMBER: 2021-1598-PST-E; TCEQ ID NUMBER: RN102409430; LOCATION: 1125 Jefferson Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 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; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §37.867(a), by failing to empty the UST system within 90 days after financial assurance coverage terminates; and 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; PENALTY: \$7,666; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202300831

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 21, 2023



Texas Health and Human Services Commission

Public Hearing Notice: Proposed Rule for the Minimum Performance Standards for Nursing Facilities that Participate in the STAR+PLUS Program

February 28, 2023

1:30 p.m.

Public Hearing Site:

Texas Health and Human Services Commission (HHSC)

John H. Winters Building

Public Hearing Room 125, First Floor

701 West 51st Street

Austin, Texas 78751

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments on the proposed new §353.610, concerning Minimum Performance Standards for Nursing Facilities that Participate in the STAR+PLUS Program.

This hearing will be webcast. Members of the public may attend the meeting in person at the address above or access a live stream of the meeting at <https://texashhsm meetings.org/HHSWebcast>. Select the tab for the Winters Public Hearing Room Live on the date and time for this meeting. Please e-mail Webcasting@hhsc.state.tx.us if you have any problems with the webcasting function.

Background and Purpose. The proposed new rule implements Texas Government Code §533.00251(h), added by House Bill 2658, 87th Legislature, Regular Session, 2021. Texas Government Code §533.00251 requires HHSC to establish minimum performance standards for nursing facility providers seeking to participate in the STAR+PLUS Medicaid managed care program. Subsection (h) directs HHSC to adopt rules establishing standards for nursing facility providers that participate in the STAR+PLUS Program; monitor provider performance in accordance with the standards and requiring corrective action, as HHSC determines necessary, from providers that do not meet the standards; and share data regarding the requirements with STAR+PLUS Medicaid managed care organizations, as appropriate.

For the full rule proposal, please see the February 17, 2023, issue of the *Texas Register*.

Agenda

Welcome and call to order

Public hearing to receive comments from interested persons on proposed new §353.610, Minimum Performance Standards for Nursing Facilities that Participate in the STAR+PLUS Program

Adjourn

Public Comment: HHSC welcomes public comments pertaining to the proposed new §353.610. Members of the public who would like to provide public comment may choose from the following options:

Oral comments provided in-person at the hearing location: Members of the public may provide oral public comment during the hearing in person at the meeting location by completing a form at the entrance to the meeting room. Do not include health or other confidential information in your comments.

Written comments: A member of the public who wishes to provide written public comments instead of, or in addition to, oral testimony may do so. These comments should be submitted as follows:

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov. To be considered, comments must be (1) postmarked or shipped before March 20, 2023, (2) hand-delivered before 5:00 p.m. on March 20, 2023, or (3) emailed before midnight on March 20, 2023. When emailing comments, please indicate "Comments on Proposed Rule 22R092" in the subject line.

Please include in your written comments your name and the organization you are representing or that you are providing comments as a private citizen. Do not include health or other confidential information in your comments. Staff will not read written comments received at the hearing aloud, but comments will be provided to the appropriate HHSC staff.

Contact: Questions regarding agenda items, content, or public hearing arrangements should be directed to Robin Fletcher, Nurse III, Health and Human Services Commission, at qmp@hhs.texas.gov or (512) 826-4599.

This public forum is open to the public. No reservations are required, and there is no cost to attend this public forum.

People with disabilities who wish to attend the public hearing and require auxiliary aids or services should contact Robin Fletcher at qmp@hhs.texas.gov at least 72 hours before the public hearing so appropriate arrangements can be made.

TRD-202300826

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 18, 2023



Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendment is to amend the methodology to establish retention payments for Home and Community-Based Services (HCBS) under HHSC's spending plan pursuant to section 9817 of the American Rescue Plan Act.

This methodology for retention payments applies to providers delivering HCBS attendant and nursing services through the provider agency and consumer directed services option in the following state plan services: Community Attendant Services program; Primary Home Care program; day activity and health services; Community first choice (CFC) personal assistance services and CFC habilitation services; 1915(i) Home and Community-Based Services--Adult Mental Health Program; and personal care services.

The proposed amendment is estimated to result in an annual aggregate expenditure of \$146,536,669 for federal fiscal year (FFY) 2022, consisting of \$89,211,524 in federal funds and \$57,325,145 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website at: <http://pfd.hhs.texas.gov>.

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by

contacting Kenneth Anzaldua, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4326; by facsimile at (512) 323-1905; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

North Austin Complex

4601 W Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD-LTSS@hhs.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response and to help curb the possible transmission of infection, please use email or phone, if possible, for communication with HHSC.

TRD-202300791

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 16, 2023



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of January 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ADDISON	TEXAS CENTER FOR INTERVENTIONAL SURGERY LLC	L07062	ADDISON	04	01/06/23
ARLINGTON	TEXAS HEALTH ARLINGTON MEMORIAL HOSPITAL	L02217	ARLINGTON	125	01/06/23
AUSTIN	WESTLAKE SURGICAL LP DBA THE HOSPITAL AT WESTLAKE MEDICAL CENTER	L06234	AUSTIN	13	01/04/23
BEAUMONT	EXXON MOBIL CORPORATION	L00603	BEAUMONT	113	01/11/23
CORPUS CHRISTI	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L04043	CORPUS CHRISTI	62	01/11/23
DALLAS	SOFIE CO	L06174	DALLAS	38	01/04/23
DALLAS	UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L05947	DALLAS	52	01/13/23
EL PASO	ADEMCO INC	L03725	EL PASO	21	01/04/23
FORT WORTH	PHYSICIANS SURGICAL CENTER OF FORT WORTH LLP	L05863	FORT WORTH	14	01/02/23
HOUSTON	ASSOCIATED TESTING LABORATORIES INC	L01553	HOUSTON	36	01/06/23
HOUSTON	TERRACON CONSULTANTS INC	L05268	HOUSTON	72	01/12/23
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	163	01/04/23
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	184	01/10/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HUNTSVILLE	HUNTSVILLE COMMUNITY HOSPITAL INC DBA HUNTSVILLE MEMORIAL HOSPITAL	L07060	HUNTSVILLE	02	01/06/23
LA PORTE	BRASKEM AMERICA INC	L06292	LA PORTE	15	01/12/23
NORTH RICHLAND HILLS	HEARTPLACE PA	L05548	NORTH RICHLAND HILLS	30	01/02/23
PASADENA	EQUISTAR CHEMICALS LP	L01854	PASADENA	56	01/12/23
PLANO	TEXAS ONCOLOGY PA	L05357	PLANO	24	01/11/23
SAN ANTONIO	SOUTHWEST GENERAL HOSPITAL LP	L02689	SAN ANTONIO	55	01/13/23
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	05	01/02/23
SPRING	WSSM LLC	L07035	KATY	05	01/09/23
SUGAR LAND	MEMORIAL HERMANN HEALTH SYSTEM	L03457	HOUSTON	76	01/13/23
TEXAS CITY	BLANCHARD REFINING COMPANY LLC	L06526	TEXAS CITY	30	01/04/23
THROUGHOUT TX	AMBIPAR RESPONSE AIE LLC	L06394	FORT WORTH	06	01/11/23
THROUGHOUT TX	THOMPSON ENGINEERING INC	L07169	HOUSTON	02	01/11/23
THROUGHOUT TX	ASSOCIATED TESTING LABORATORIES INC	L01553	HOUSTON	37	01/11/23
THROUGHOUT TX	ACUREN INSPECTION INC DBA PREMIUM INSPECTION AND TESTING INC	L01774	LA PORTE	313	01/05/23
THROUGHOUT TX	AMERICAN PIPING INSPECTION INC	L06835	LONGVIEW	15	01/05/23
THROUGHOUT TX	PRECISION NDT LLC	L07054	MIDLAND	08	01/03/23
THROUGHOUT TX	J Z RUSSELL INDUSTRIES INC	L06459	PORT ARTHUR	12	01/10/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	DIALOG WIRELINE SERVICES LLC	L06104	VALLEY VIEW	21	01/10/23
TYLER	TYLER REGIONAL HOSPITAL LLC DBA UT HEALTH EAST TEXAS TYLER	L06973	TYLER	08	01/04/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
IRVING	INCIPIT MEDICAL PHYSICS INC	L06522	IRVING	06	01/10/23
PAMPA	PRIME HEALTHCARE SERVICES – PAMPA LLC	L06510	PAMPA	06	01/11/23
PLANO	TEXAS HEALTH PHYSICIANS GROUP	L06480	PLANO	20	01/11/23
THROUGHOUT TX	EXXON MOBIL CORPORATION	L01134	BAYTOWN	79	01/09/23
THROUGHOUT TX	ORION MARINE CONSTRUCTION INC	L06473	PORT LAVACA	05	01/10/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AMARILLO	OKLAHOMA BLOOD INSTITUTE	L06841	AMARILLO	01	01/10/23
ARLINGTON	IMAGING AND MEDICAL DIAGNOSTIC SPECIALISTS PA	L04876	ARLINGTON	12	01/11/23

TERMINATIONS OF LICENSES ISSUED: (Continued)

AUSTIN	AUSTIN WHITE LIME COMPANY LTD	L02941	AUSTIN	16	01/09/23
HOUSTON	FUGRO USA LAND INC	L00058	HOUSTON	67	01/10/23
KILLEEN	CITY OF KILLEEN	L04668	KILLEEN	13	01/04/23
ODESSA	AMERICAN SAFETY SERVICES INC	L06887	ODESSA	01	01/06/23
THROUGHOUT TX	RED J SERVICES LLC	L06778	AMARILLO	03	01/11/23

TRD-202300819
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: February 17, 2023

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 Licensing Actions for Radioactive Materials

During the second half of January 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
MIDLAND	BASIN PUMP DOWN SERVICES	L07170	MIDLAND	00	01/23/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ANGLETON	ISOTHERAPEUTICS GROUP	L05969	ANGLETON	51	01/30/23
BAY CITY	EQUISTAR CHEMICALS LP	L03938	BAY CITY	36	01/30/23
BORGER	NUTRIEN US LLC	L02772	BORGER	23	01/20/23
BORGER	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L05181	BORGER	29	01/17/23
EL PASO	IONETIX CORPORATION	L07100	EL PASO	02	01/18/23
EL PASO	TEXAS ONCOLOGY PA	L05771	EL PASO	14	01/24/23
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L07089	FORT WORTH	02	01/18/23
FORT WORTH	ONCOLOGY HEMATOLOGY CONSULTANTS PA DBA THE CENTER FOR CANCER AND BLOOD DISORDERS	L05919	FORT WORTH	33	01/18/23
FREEPORT	BASF CORPORATION	L01021	FREEPORT	71	01/18/23
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06358	HOUSTON	15	01/23/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HOUSTON	THE METHODIST HOSPITAL RESEARCH INSTITUTE DBA HOUSTON METHODIST RESEARCH INSTITUTE	L06383	HOUSTON	22	01/27/23
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06227	HOUSTON	59	01/23/23
HUMBLE	CARDIOVASCULAR ASSOCIATION PLLC	L05421	HUMBLE	31	01/18/23
HUMBLE	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HUMBLE	151	01/31/23
IRVING	BAYLOR MEDICAL CENTER AT IRVING	L02444	IRVING	125	01/18/23
LA PORTE	INEOS USA LLC	L00088	LA PORTE	66	01/25/23
LUBBOCK	META ISOTOPE TECHNOLOGY LLC	L06827	LUBBOCK	07	01/30/23
LUBBOCK	LUBBOCK HERITAGE HOSPITAL LLC DBA GRACE MEDICAL CENTER	L06040	LUBBOCK	13	01/18/23
PASADENA	KARAN S BHALLA MD PLLC	L07018	PASADENA	02	01/31/23
PASADENA	SEKISUI SPECIALTY CHEMICALS AMERICA LLC	L06260	PASADENA	03	01/27/23
PASADENA	CHCA BAYSHORE LP	L00153	PASADENA	108	01/25/23
PORT ARTHUR	THE PREMCOR REFINING GROUP INC	L04871	PORT ARTHUR	28	01/26/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

ROCKWALL	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L05412	ROCKWALL	17	01/23/23
SAN ANTONIO	TEXAS ONCOLOGY PA	L06759	SAN ANTONIO	11	01/23/23
SUNRAY	DIAMOND SHAMROCK REFINING COMPANY LP	L04398	SUNRAY	26	01/17/23
THROUGHOUT	ECM INTERNATIONAL INC	L06987	EL PASO	8	01/25/23
THROUGHOUT TX	TEXAS ONCOLOGY PA	L07107	ABILENE	03	01/30/23
THROUGHOUT TX	BISON ENVIRONMENTAL SERVICES LLC	L06995	BEAUMONT	02	01/25/23
THROUGHOUT TX	WELD SPEC INC	L05426	BEAUMONT	122	01/18/23
THROUGHOUT TX	BEYOND ENGINEERING AND TESTING LLC	L06924	CARROLLTON	10	01/30/23
THROUGHOUT TX	ECS SOUTHWEST LLP	L05384	CARROLLTON	25	01/18/23
THROUGHOUT TX	NE TIME LLC	L06590	CORPUS CHRISTI	06	01/20/23
THROUGHOUT TX	SPUR INDUSTRIAL LLC DBA SPUR ENVIRONMENTAL SERVICES	L06888	CRESSON	03	01/27/23
THROUGHOUT TX	ENERCON SERVICES INC	L05447	DALLAS	19	01/23/23
THROUGHOUT TX	ALLIANCE IMAGING INC	L05336	DALLAS	21	01/30/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	LOCKHEED MARTIN CORPORATION DBA LOCKHEED MARTIN AERONAUTICS COMPANY	L05633	FORT WORTH	24	01/27/23
THROUGHOUT TX	NINYO&MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES	L06379	HOUSTON	06	0/17/23
THROUGHOUT TX	PROPORTIONAL TECHNOLOGIES INC	L04747	HOUSTON	37	01/17/23
THROUGHOUT TX	ARCTIC TESTING AND INSPECTION LLC	L07065	LA PORTE	05	01/18/23
THROUGHOUT TX	TURNER SPECIALTY SERVICES LLC	L05417	NEDERLAND	57	01/20/23
THROUGHOUT TX	NATIONAL INSPECTION SERVICES LLC	L05930	ODESSA	52	01/23/23
THROUGHOUT TX	SOCON SONAR WELL SERVICES INC	L06982	STAFFORD	1	01/25/23
TYLER	THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER	L01796	TYLER	81	01/25/23
WAXAHACHIE	BAYLOR MEDICAL CENTER AT WAXAHACHIE DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - WAXAHACHIE	L06874	WAXAHACHIE	06	01/24/23
WESLACO	KNAPP MEDICAL CENTER	L03290	WESLACO	1	01/31/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
KINGSVILLE	TEXAS A&M UNIVERSITY KINGSVILLE	L01821	KINGSVILLE	63	01/17/23
LUBBOCK	COVENANT MEDICAL GROUP	L04468	LUBBOCK	36	01/31/23
THROUGHOUT TX	CIMA SERVICES LP	L06530	PASADENA	04	01/31/23
WACO	RADIATION TECHNOLOGY INC	L04633	WACO	40	01/26/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BROWNSVILLE	JRG MEDICAL EQUIPMENT LP	L05831	BROWNSVILLE	10	01/27/23

TRD-202300820
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: February 17, 2023



Texas Department of Insurance

Texas Automobile Insurance Plan Association Filing Request for Amendments to Texas Plan of Operation

The commissioner of insurance will consider a request by the Texas Automobile Insurance Plan Association (TAIPA) to amend its *Texas Plan of Operation*.

On November 18, 2022, the TAIPA Governing Committee voted in favor of proposed amendments to Sections 36 and 47 D of its *Texas Plan of Operation*. Section 36 addresses the election of representatives to the Governing Committee, and Section 47 D concerns obligations of insurers that leave the market.

You can view the proposed amendments on TDI's website: www.tdi.texas.gov/rules/2023/exrules.html.

TDI will consider any written comments that are received by TDI no later than 5:00 p.m., central time, on March 15, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on March 15, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

TRD-202300777
 Jessica Barta
 General Counsel
 Texas Department of Insurance
 Filed: February 16, 2023



Texas Lottery Commission

Scratch Ticket Game Number 2515 "LOTERIA SUPREME"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2515 is "LOTERIA SUPREME". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2515 shall be \$100.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2515.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: AIRPLANE SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, BAG SYMBOL, BIRD SYMBOL, BOOT SYMBOL, BOW SYMBOL, CAKE SYMBOL, CANDY SYMBOL, ATM CARD SYMBOL, CLUB SYMBOL, COFFEE SYMBOL, COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, FLAG SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, JOKER SYMBOL, KEY SYMBOL, LAMP SYMBOL, LEMON SYMBOL, LIGHTNING SYMBOL, MOON SYMBOL, ORANGE SYMBOL, PEACH SYMBOL, PICK SYMBOL, PIGGY BANK SYMBOL, PIZZA SYMBOL, POT OF GOLD SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SHADES SYMBOL, SEVEN SYMBOL, SPADE SYMBOL, SUN SYMBOL, TROPHY SYMBOL, WALLET SYMBOL, WISHBONE SYMBOL, ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL,

COWBOY SYMBOL, COWBOY HAT SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, ROAD RUNNER SYMBOL, SADDLE SYMBOL, SHIP SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, ANCHOR SYMBOL, BAR SYMBOL, BELL SYMBOL, BILL SYMBOL, CAMERA SYMBOL, CHEESE SYMBOL, CHEST SYMBOL, CLOVER SYMBOL, DICE SYMBOL, DOLLAR SIGN SYMBOL, DRUM SYMBOL, EMERALD SYMBOL, GIFT SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, PEARL SYMBOL, SHELL SYMBOL, STAR SYMBOL, VAULT SYMBOL, WATER BOTTLE SYMBOL, \$100, \$200, \$300, \$500, \$1,000, \$5,000, \$10,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2515 - 1.2D

PLAY SYMBOL	CAPTION
AIRPLANE SYMBOL	AIRPLANE
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
BAG SYMBOL	BAG
BIRD SYMBOL	BIRD
BOOT SYMBOL	BOOT
BOW SYMBOL	BOW
CAKE SYMBOL	CAKE
CANDY SYMBOL	CANDY
ATM CARD SYMBOL	CARD
CLUB SYMBOL	CLUB
COFFEE SYMBOL	COFFEE
COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMND
FLAG SYMBOL	FLAG
GOLD BAR SYMBOL	GOLDBAR
HEART SYMBOL	HEART
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
LAMP SYMBOL	LAMP
LEMON SYMBOL	LEMON
LIGHTNING SYMBOL	LIGHTN
MOON SYMBOL	MOON
ORANGE SYMBOL	ORANGE
PEACH SYMBOL	PEACH
PICK SYMBOL	PICK

PIGGY BANK SYMBOL	PIGBNK
PIZZA SYMBOL	PIZZA
POT OF GOLD SYMBOL	POTGLD
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SHADES SYMBOL	SHADES
SEVEN SYMBOL	SEVEN
SPADE SYMBOL	SPADE
SUN SYMBOL	SUN
TROPHY SYMBOL	TROPHY
WALLET SYMBOL	WALLET
WISHBONE SYMBOL	WISHBONE
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY HAT SYMBOL	COWBOY HAT
COWBOY SYMBOL	COWBOY
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL

GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCERBALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
ANCHOR SYMBOL	ANCHOR

BAR SYMBOL	BAR
BELL SYMBOL	BELL
BILL SYMBOL	BILL
CAMERA SYMBOL	CAMERA
CHEESE SYMBOL	CHEESE
CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
DICE SYMBOL	DICE
DOLLAR SIGN SYMBOL	DOLLAR
DRUM SYMBOL	DRUM
EMERALD SYMBOL	EMERALD
GIFT SYMBOL	GIFT
MELON SYMBOL	MELON
NECKLACE SYMBOL	NECKLACE
PEARL SYMBOL	PEARL
SHELL SYMBOL	SHELL
STAR SYMBOL	STAR
VAULT SYMBOL	VAULT
WATER BOTTLE SYMBOL	WATER
\$100	ONHN
\$200	TOHN
\$300	THHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$10,000	10TH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The

Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2515), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 015 within each Pack. The format will be: 2515-0000001-001.

H. Pack - A Pack of the "LOTERIA SUPREME" Scratch Ticket Game contains 015 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 015 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LOTERIA SUPREME" Scratch Ticket Game No. 2515.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly ninety-eight (98) Play Symbols. A prize winner in the "LOTERIA SUPREME" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAY AREA 1 INSTRUCTIONS (PLAYBOARD): (1) The player completely scratches the CALLER'S CARD to reveal 27 Play Symbols. (2) The player scratches ONLY the Play Symbols on the PLAYBOARD that exactly match the Play Symbols revealed on the CALLER'S CARD. (3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAY AREA 2 INSTRUCTIONS (BONUS): If the player reveals 2 matching Play Symbols in the same BONUS, the player wins the PRIZE for that BONUS. PLAY AREA 3 INSTRUCTIONS (10X, 20X, 50X, 100X, 500X MULTIPLIER): The player scratches the 10X, 20X, 50X, 100X and 500X MULTIPLIER boxes to reveal 2 Play Symbols in each box. If the player reveals 2 matching Play Symbols in the same MULTIPLIER box, the player multiplies the total prize won on the ticket by that MULTIPLIER and wins that amount. For example, revealing 2 "STAR" Play Symbols in the 10X MULTIPLIER box will multiply the total prize won by 10 TIMES. INSTRUCCIONES PARA ÁREA DE JUEGO 1 (TABLA DE JUEGO): (1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. (2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. (3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. INSTRUCCIONES PARA ÁREA DE JUEGO 2 (BONO): Si el jugador revela 2 símbolos iguales en el mismo BONO, el jugador gana el PREMIO para ese BONO. INSTRUCCIONES PARA ÁREA DE JUEGO 3 (MULTIPLICADOR 10X, 20X, 50X, 100X, 500X): El jugador raspa las cajas de MULTIPLICADOR 10X, 20X, 50X, 100X y 500X para revelar 2 símbolos en cada caja. Si el jugador revela 2 símbolos iguales en la misma caja de MULTIPLICADOR, el jugador multiplica el premio total ganado en el boleto por ese MULTIPLICADOR y gana esa cantidad. Por ejemplo, revelando 2 símbolos de "ESTRELLA" en la caja MULTIPLICADOR 10X multiplicará por 10 el premio total ganado. No portion of the

Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly ninety-eight (98) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly ninety-eight (98) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the ninety-eight (98) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the ninety-eight (98) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAY AREA 1 (PLAYBOARD)/ÁREA DE JUEGO 1 (TABLA DE JUEGO): No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAY AREA 1 (PLAYBOARD)/ÁREA DE JUEGO 1 (TABLA DE JUEGO): At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD/TABLA DE JUEGO play area.

E. PLAY AREA 1 (PLAYBOARD)/ÁREA DE JUEGO 1 (TABLA DE JUEGO): No matching Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

F. PLAY AREA 2 (BONUS)/ÁREA DE JUEGO 2 (BONO): There will never be matching Play Symbols in the BONUS/BONO play areas, unless used as a winning play.

G. PLAY AREA 2 (BONUS)/ÁREA DE JUEGO 2 (BONO): Non-winning Play Symbols from one (1) BONUS/BONO play area will not match winning Play Symbols from another BONUS/BONO play area.

H. PLAY AREA 2 (BONUS)/ÁREA DE JUEGO 2 (BONO): Non-winning Play Symbols will never appear more than one (1) time on a Ticket.

I. PLAY AREA 2 (BONUS)/ÁREA DE JUEGO 2 (BONO): Winning Play Symbols will be matching and appear in the same BONUS/BONO play area and will not appear more than two (2) times on a Ticket.

J. PLAY AREA 3 (10X, 20X, 50X, 100X, 500X MULTIPLIER)/ÁREA DE JUEGO 3 (MULTIPLICADOR 10X, 20X, 50X, 100X, 500X): There will never be matching Play Symbols in the MULTIPLIER/MULTIPLICADOR play areas, unless used as a winning play.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA SUPREME" Scratch Ticket Game prize of \$100, \$200, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$100, \$200, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer

shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA SUPREME" Scratch Ticket Game prize of \$1,000, \$5,000, \$10,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "LOTERIA SUPREME" Scratch Ticket Game top level prize of \$7,500,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "LOTERIA SUPREME" Scratch Ticket Game prize, with the exception of the top prize level of \$7,500,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 2. in default on a loan made under Chapter 52, Education Code;
 3. in default on a loan guaranteed under Chapter 57, Education Code; or
 4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.
- F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LOTERIA SUPREME" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LOTERIA SUPREME" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2515. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2515 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$100	1,200,000	7.50
\$200	900,000	10.00
\$300	150,000	60.00
\$500	450,000	20.00
\$1,000	81,000	111.11
\$5,000	6,000	1,500.00
\$10,000	450	20,000.00
\$100,000	40	225,000.00
\$7,500,000	4	2,250,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2515 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2515, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202300834
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 21, 2023



Scratch Ticket Game Number 2516 "INSTANT \$1,000!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2516 is "INSTANT \$1,000!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2516 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2516.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, 5X SYMBOL, 10X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2516 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWN

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	WIN\$
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2516), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 050 within each Pack. The format will be: 2516-0000001-001.

H. Pack - A Pack of the "INSTANT \$1,000!" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "INSTANT \$1,000!" Scratch Ticket Game No. 2516.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "INSTANT \$1,000!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty (60) Play Symbols. BONUS 1 & BONUS 2: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. KEY NUMBER MATCH: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "COIN" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty (60) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty (60) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty (60) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty (60) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure. B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols. C. BONUS 1 & BONUS 2: A non-winning Prize Symbol in a BONUS play area will never match a winning Prize Symbol in the other BONUS play area. D. BONUS 1 & BONUS 2: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas. E. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20). F. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket. G. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket. H. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol. I. KEY NUMBER MATCH: A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure. J. KEY NUMBER MATCH: The "COIN" (WINS) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure. K. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure. L. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT \$1,000!" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall

sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT \$1,000!" Scratch Ticket Game prize of \$1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT \$1,000!" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "INSTANT \$1,000!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "INSTANT \$1,000!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 4,080,000 Scratch Tickets in Scratch Ticket Game No. 2516. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2516 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	489,600	8.33
\$20.00	204,000	20.00
\$30.00	163,200	25.00
\$50.00	122,400	33.33
\$100	40,800	100.00
\$200	10,064	405.41
\$500	1,360	3,000.00
\$1,000	1,802	2,264.15

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.95. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2516 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2516, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202300841
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 22, 2023



Public Utility Commission of Texas

Preliminary Notice and Request for Comments on Chapter 26 Rule Review

The Public Utility Commission of Texas (commission) publishes this preliminary notice of intention to review Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, in accordance with Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov.

The commission seeks comments on whether any rule in Chapter 26 should be repealed or amended. Interested persons may file comments electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, March 17, 2023. When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 54589.

If it is determined that any section of Chapter 26 needs to be repealed or amended, and that the repeal or amendment can be completed as a part of this rule review, the commission will include the proposed repeal or amendment into its formal notice of intention to review Chapter 26. Interested persons will have an opportunity to comment on these proposed rule repeals and amendments at that time.

If it is determined that any section of Chapter 26 may need to be repealed or amended, but the repeal or amendment requires further investigation or is inappropriate for consideration as a part of a rule review,

the commission may consider the repeal or amendment in a future rule-making proceeding.

TRD-202300781

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 16, 2023

◆ ◆ ◆
Texas Racing Commission

Notice of Deadline to Request Recognition as Horsemen's Representative

Pursuant to the Texas Racing Act, Tex. Occ. Code §2023.051 and 16 Texas Administrative Code §309.299, the Executive Director for the Texas Racing Commission provides notice that Friday, March 24, 2023, is the deadline to request Commission recognition as the horsemen's representative organization. The Texas Racing Act authorizes the Commission to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, and other persons involved in the racing industry. In the Texas Rules of Racing §309.299, the Commission has adopted criteria for being recognized as the organization to represent horse owners and trainers. This organization will be responsible for negotiating with each licensed racetrack regarding the racetrack's live racing programs in-

cluding, but not limited to, the allocation of purse money to various live races as well as the export and import of simulcast signals during live race meetings. To be eligible for recognition as the horsemen's representative organization, each officer and director of the organization during the two-year term of the recognition must be licensed by the Commission as an owner or trainer. The Commission will also review the experience and qualifications of the organization's directors, executive officers, and management personnel, the organization's benevolence programs, and the degree to which the organization's membership represents a fair and equitable cross-section of the horse owners and trainers participating at each of the racetracks in this state. The organization is subject to audit by the Texas Racing Commission. To request recognition, an organization must file a written request on a form prescribed by the Executive Director. To obtain a copy of the form or for more information, interested persons should contact Virginia S. Fields, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 490-4009 or by email at virginia.fields@txrc.texas.gov.

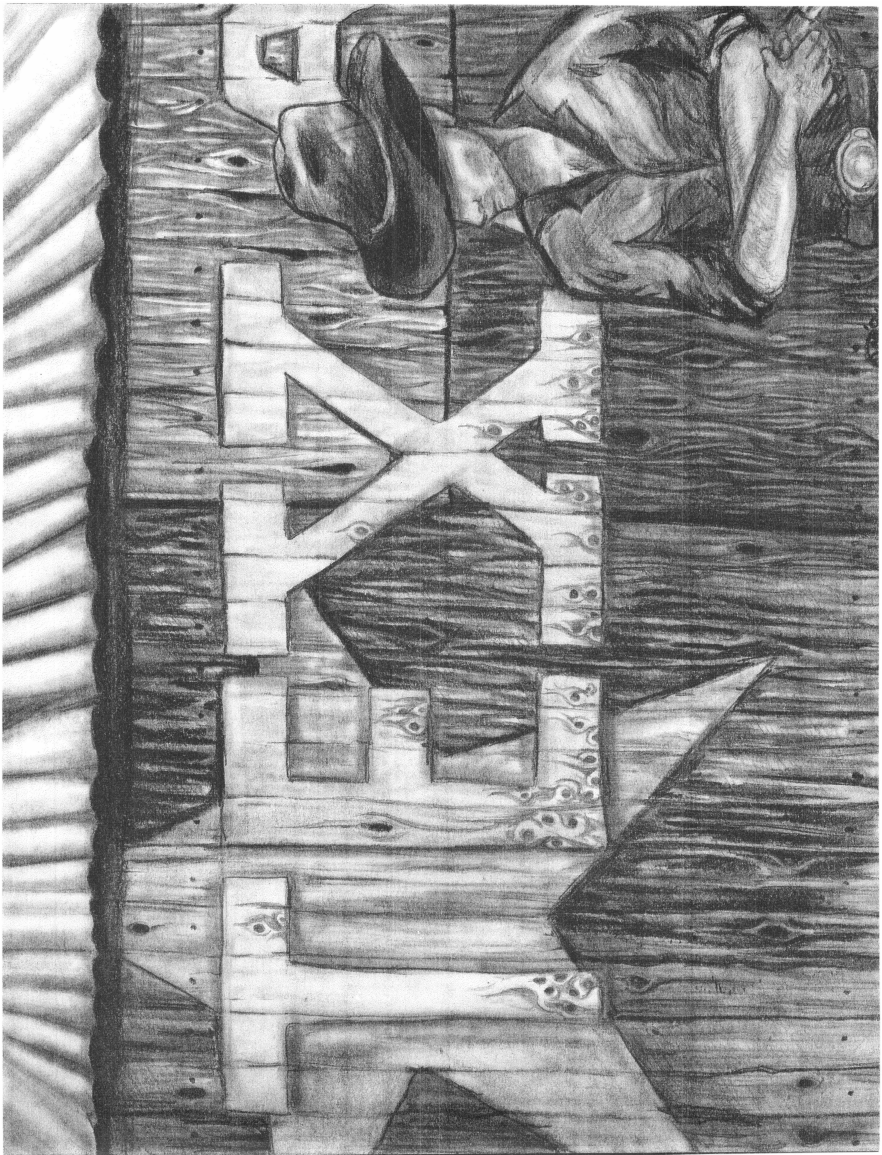
TRD-202300775

Virginia Fields

General Counsel

Texas Racing Commission

Filed: February 16, 2023



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 47 (2022) is cited as follows: 47 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 “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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