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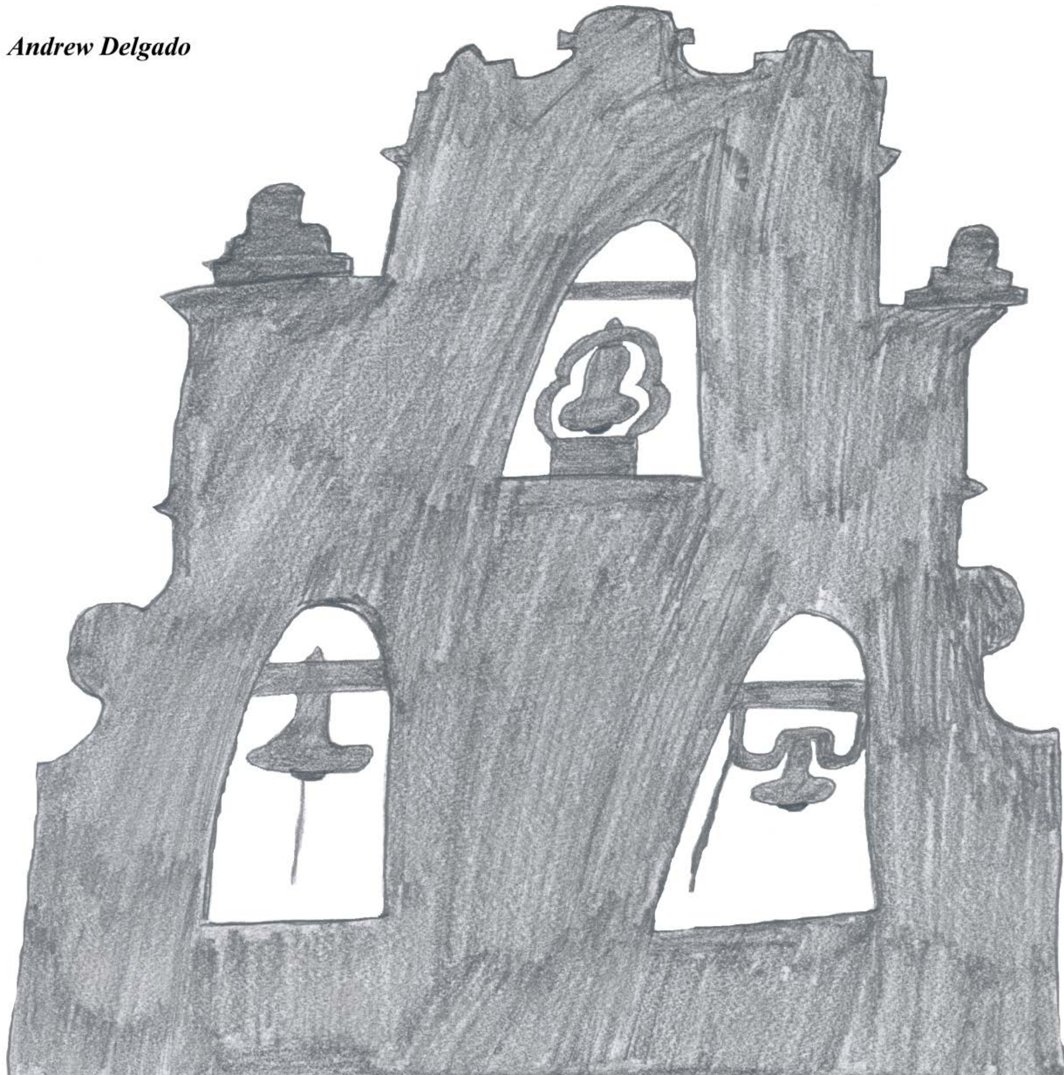

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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

Secretary of State –
Nandita Berry

Staff
Leti Benavides
Dana Blanton
Jeana Bores
Elaine Crease
Jill S. Ledbetter
Michelle Miner
Barbara Strickland
Mirand Zepeda

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Open Meetings

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

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

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

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

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

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-1220-GA

Requestor:

The Honorable Doug Miller

Co-Chair, Edwards Aquifer Legislative Oversight Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Edwards Aquifer Authority may provide funding to the U.S. Fish & Wildlife Service for the implementation of a refugia program (RQ-1220-GA)

Briefs requested by September 30, 2014

RQ-1221-GA

Requestor:

The Honorable W. Coty Siegert

Robertson County Attorney

Post Office Box 409

Franklin, Texas 77856

Re: Qualification for early voting by mail under section 82.002 of the Election Code (RQ-1221-GA)

Briefs requested by October 2, 2014

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

TRD-201404436
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 17, 2014

Opinions

Opinion No. GA-1079

Mr. Michael Williams

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: The authority of members of a governmental body to participate in a meeting by videoconference call under §551.127 of the Government Code (RQ-1191-GA)

SUMMARY

An in-person meeting of an open-enrollment charter school's governing board must be physically accessible to the public to comply with the Open Meetings Act. Because accessibility depends on particular facts, we cannot conclude that an open-enrollment charter school's governing board may conduct such a meeting in compliance with the Act beyond its geographic service area.

An open-enrollment charter school's governing board may conduct an open meeting by videoconference call as provided by §551.127 of the Government Code. Provided that the member of the board of the open-enrollment charter school presiding over the meeting is present at a physical location open to the public in or within a reasonable distance of the charter school's geographic territory, other members of the board may participate in a videoconference call meeting from remote locations outside of the geographic service area, including areas outside of the state.

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

TRD-201404413
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 16, 2014

Arturo Rodriguez

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-589. The Texas Ethics Commission has been asked to consider whether a specific-purpose committee that is established by and for the purpose of supporting and assisting a person as both a candidate and an officeholder may use political contributions to purchase tickets to entertainment events for the person and the person's spouse and dependent children to attend and engage in campaign or officeholder activities.

The Texas Ethics Commission is authorized by §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) §2152.064, Government Code; and (11) §2155.003, Government Code.

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

TRD-201404430
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: September 17, 2014

Advisory Opinion Request

AOR-590. The Texas Ethics Commission has been asked to consider whether an employee of a member of the Texas Legislature may, at the direction of the member and as a regular part of the employee's job duties, drive the member between the member's Austin residence and the Capitol and drive the member for personal appointments and errands.

The Texas Ethics Commission is authorized by §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) §2152.064, Government Code; and (11) §2155.003, Government Code.

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

TRD-201404431
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: September 17, 2014

Adela Hernandez

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

The Texas Indigent Defense Commission proposes the repeal of §§174.26, 174.27, and 174.28, concerning policy monitoring processes and benchmarks, and simultaneously proposes new §§174.26, 174.27, and 174.28 to replace the repealed rules.

Sections 174.26 - 174.28 were also reviewed pursuant to Texas Government Code, §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the reasons for the rules continue to exist but that the rules will be repealed and proposed as new rules with revisions as described in this preamble. The proposed repeals and new sections are the result of the rule review process.

In general, each section was reviewed and proposed for repeal and readoption in order to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; and to change the name of the agency from Task Force on Indigent Defense to Texas Indigent Defense Commission, which occurred on September 1, 2011 pursuant to HB 1754, 82nd Legislature, Regular Session.

SECTION-BY-SECTION SUMMARY

The following section-by-section summary describes only substantive changes.

The revisions to §174.26 reflect a position title change of the Texas Indigent Defense Commission and the change to the grant officials listed in the Commission's grant administration rule §173.301.

The revisions to §174.27 reflect the Commission's elimination of equalization grants and its use of discretionary grants. Subsection (a)(8) and (9) add two additional factors for the Commission's risk assessment and delete one related to a self-assessment that may be conducted by a county. Subsection (b) is also added to clarify that the Commission may conduct limited scope reviews as a result of factors outside of the risk assessment.

The revisions to §174.28 include the deletion of text that reflects that the review of local indigent defense plans is now conducted on each plan submitted every two years and is no longer specifically part of the on-site monitoring process. The procedure for examining timely appointments of counsel in criminal matters is described in greater detail. The time frames for examining timely appointments of counsel in juvenile matters has been adjusted to meet changes in statute. Time frames for issuing reports have also been adjusted.

FISCAL NOTE

Ms. Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed repeals and new rules are in effect, enforcing or administering the sections will have no fiscal impact on local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the proposed rules, nor do the new rules have any anticipated adverse effect on small or micro-businesses.

PUBLIC BENEFIT

Mr. Jim Bethke, Executive Director of the Commission, has also determined that for each of the first five years the proposed rules are in effect the public benefit will be an improvement in the quality of indigent defense services because of corrective actions taken by local jurisdictions to more fully meet the requirements of state law related to the provision of indigent defense services.

REGULATORY ANALYSIS

The Commission has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed repeals and new rules may be submitted in writing to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, 209 W. 14th St. Suite 202, Austin, Texas 78701 or by email to wshack-

elford@tidc.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

DIVISION 1. DEFINITIONS

1 TAC §174.26

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Judicial Council or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The repeal is also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The repeal is also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

No other statutes, articles, or codes are affected by the proposed repeal.

§174.26. Subchapter Definitions.

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

Filed with the Office of the Secretary of State on September 11, 2014.

TRD-201404361
Wesley Shackelford
Deputy Director/Special Counsel
Texas Judicial Council
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 936-6994

1 TAC §174.26

STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The rules are also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The rules are also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

No other statutes, articles, or codes are affected by the proposed new rule.

§174.26. Subchapter Definitions.

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

(1) Authorized Official--The county judge or other designee authorized to apply for, accept, decline, modify, or cancel a grant designated under §173.301 of this title.

(2) Commission--Commission means the Texas Indigent Defense Commission.

(3) Executive Director--The executive director of the Commission.

(4) Period of review--The 12 months preceding the date of the monitoring visit.

(5) Policies and Standards Committee--A committee of the Commission charged with developing policies and standards related to improving indigent defense services.

(6) Policy Monitor--The employee of the Commission who monitors the effectiveness of a county's indigent defense policies, standards, and procedures.

(7) Risk Assessment--A tool to rank each county's potential risk of not being in compliance with indigent defense laws.

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

Filed with the Office of the Secretary of State on September 11, 2014.

TRD-201404362
Wesley Shackelford
Deputy Director/Special Counsel
Texas Judicial Council
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 936-6994

DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

1 TAC §174.27, §174.28

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Judicial Council or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The repeals are also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state

law relating to indigent defense. The repeals are also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

No other statutes, articles, or codes are affected by the proposed repeals.

§174.27. Risk Assessment.

§174.28. On-Site Monitoring 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.

Filed with the Office of the Secretary of State on September 11, 2014.

TRD-201404363
Wesley Shackelford
Deputy Director/Special Counsel
Texas Judicial Council
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 936-6994

1 TAC §174.27, §174.28

STATUTORY AUTHORITY

The proposed rules are authorized by Texas Government Code §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The rules are also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The rules are also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

No other statutes, articles, or codes are affected by the proposed new rules.

§174.27. Risk Assessment.

(a) A risk assessment of each county shall be conducted by the policy monitor each fiscal year as the primary means of determining which counties will be selected for on-site policy monitoring. On-site monitoring visits to counties shall then be apportioned by administrative judicial region, county size, risk assessment scores, past visits and other documented factors. The risk assessment shall use a variety of factors related to the provision of indigent defense services, including but not limited to the following:

(1) Whether a county reported investigation and expert witness expenses;

(2) Whether a county reported reimbursements for attorney fees;

(3) Amount of per capita indigent defense expenses;

(4) Felony, misdemeanor, and juvenile attorney appointment rates;

(5) Population of a county;

(6) Whether complaints about a county have been received by the Commission;

(7) Whether a county received a multi-year discretionary grant;

(8) Whether the justices of the peace or municipal judges reported requests for counsel in their Texas Judicial Council Monthly Court Activity Reports;

(9) The ratio of misdemeanor requests for counsel from Article 15.17 hearings as reported in Texas Judicial Council Monthly Activity Reports to the number of misdemeanor cases paid reported by the county; and

(10) Whether a county reported appeals cases.

(b) Counties may receive monitoring visits as a result of factors outside of the risk assessment. An elected state or local official may request a monitoring visit. If Commission staff make a drop-in visit, fiscal monitoring review, or grant program review, and determines that violations of the Fair Defense Act may be present in a county, the monitor may conduct a limited-scope review of the county's procedures.

§174.28. On-Site Monitoring Process.

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. If the county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list.

(6) Payment Process. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. The policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address areas of noncompliance.

(2) County Response. Within 60 days of the date the report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where the report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title.

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

Filed with the Office of the Secretary of State on September 11, 2014.

TRD-201404364
Wesley Shackelford
Deputy Director/Special Counsel
Texas Judicial Council
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 936-6994

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §§71.1 - 71.3, 71.5 - 71.7, 71.9 - 71.12, 71.15, 71.17, 71.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 71, §§71.1 - 71.3, 71.5 - 71.7, 71.9 - 71.12, 71.15, 71.17, and 71.19, concerning Applications and Applicants. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization. Comments were received concerning several rules under current Chapter 71, and those are addressed under the corresponding preamble to proposed Chapter 72.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, at 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705 or by e-mail to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§71.1. Definitions.

§71.2. Application for License.

§71.3. Qualifications for Applicants.

§71.5. Approved Chiropractic Schools and Colleges.

§71.6. Time, Place and Scope of Examination.

§71.7. Jurisprudence Examination.

§71.9. Failure to Appear at Jurisprudence Examination.

§71.10. Reexaminations.

§71.11. Disqualification to Take Jurisprudence Examinations.

§71.12. Temporary License.

§71.15. Recognized Specialties.

§71.17. Temporary Faculty License.

§71.19. Criminal History Evaluation Letters.

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

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TRD-201404323
Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §§73.1 - 73.5, 73.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 73, §§73.1 - 73.5 and 73.7, concerning Licenses and Renewals. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization. Comments were received concerning several rules under current Chapter 73, and those are addressed under the corresponding preamble to proposed Chapter 75.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to

rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§73.1. Notifications and Change of Address.
§73.2. Renewal of License.
§73.3. Continuing Education.
§73.4. Inactive Status.
§73.5. Failure to Meet Continuing Education Requirements.
§73.7. Approved Continuing Education Courses.

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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §§74.1 - 74.3, 74.5, 74.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 74, §§74.1 - 74.3, 74.5, and 74.9, concerning Chiropractic Facilities. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization. Comments were received concerning several rules under current Chapter 74, and those are addressed under the corresponding preamble to proposed Chapter 73.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§74.1. Definitions.
§74.2. Facility Registration Requirements.
§74.3. Annual Renewal.
§74.5. Rules of Conduct.
§74.9. Disciplinary Action.

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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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CHAPTER 75. RULES OF PRACTICE

22 TAC §§75.1 - 75.4, 75.6 - 75.11, 75.13, 75.15, 75.17, 75.19, 75.21, 75.23, 75.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 75, §§75.1 - 75.4, 75.6 - 75.11, 75.13, 75.15, 75.17, 75.19, 75.21, 75.23 and 75.25, concerning Rules of Practice. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses

or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. Comments were received concerning the repeal of these rules and their reorganization.

A licensee commented that current rule §75.23, concerning Spinal Screenings, should be repealed. The comment noted that the rule was "unnecessary, burdensome on the stakeholders and unenforceable by the TBCE except under questionable circumstances." The licensee further noted that no similar rule could be found in any other profession, concerning public information screenings. The licensee goes on to pose the question of whether the public is so oblivious that they would be unaware that a screening did not obligate them to seek an opinion from another doctor. The licensee also questions the necessity of creating a log which must be maintained for at least six months "other than to overburden, over-document and basically discourage our licensees from providing a public service?" The Board would note that the licensee's concerns have been received and were tendered to the Rules Committee for appropriate discussion and consideration but no recommendation for modification was presented to the Board. Modifying the rule was thought to provide less assurance and protection to the public of their health and safety.

Comments were received concerning amending several rules under current Chapter 75, and those are addressed under the corresponding preamble to proposed Chapter 78.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§75.1. Grossly Unprofessional Conduct.
§75.2. Proper Diligence and Efficient Practice of Chiropractic.
§75.3. Individuals With Criminal Convictions.
§75.4. Undercover Investigations.
§75.6. Duty to Respond to Complaint.
§75.7. Required Fees and Charges.
§75.8. Public Interest Information.
§75.9. Complaint Procedures.
§75.10. Disciplinary Guidelines.
§75.11. Schedule of Sanctions.
§75.13. Disciplinary Records and Reportable Actions.
§75.15. Peer Review Committee.
§75.17. Scope of Practice.
§75.19. Cease and Desist Orders.
§75.21. Acupuncture.
§75.23. Spinal Screenings.
§75.25. Impaired Licensees and Applicants.

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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

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CHAPTER 76. FORMAL SOAH PROCEEDINGS

22 TAC §§76.1, 76.3, 76.5, 76.7, 76.9, 76.11, 76.13, 76.15, 76.17, 76.19, 76.21

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 76, §§76.1, 76.3, 76.5, 76.7, 76.9, 76.11, 76.13, 76.15, 76.17, 76.19 and 76.21, concerning Formal SOAH Proceedings. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§76.1. Definitions.

§76.3. Commencement of Enforcement Proceedings.

§76.5. Denial of Application.

§76.7. SOAH Hearings.

§76.9. Appearance.

§76.11. Default Judgment.

§76.13. Depositions, Subpoenas, and Witness Expenses.

§76.15. Hearing Exhibits and Record.

§76.17. Proposal for Decision.

§76.19. Decision of the Board.

§76.21. Extension of 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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

22 TAC §§77.1 - 77.3, 77.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 77, §§77.1 - 77.3 and 77.5, concerning Advertising and Public Communication. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. Comments were received concerning the repeal of these rules and their reorganization. No comments were received concerning the restructuring of this current Chapter 77 into the proposed Chapter 77 that is a combination of current Chapters 77 and 78.

A licensee submitted a comment requesting the permanent repeal of current rule §77.3, entitled Miscellaneous, noting that "[t]his rule would seem to be outdated when considering the current requirements of providers to adopt EHR [electronic health records] and paperless record systems. It is not practical to print out a notification of charges on every visit for every patient. Patients are typically told up-front what their policies cover and/or do not cover, and what services they will be responsible for." The Board responds that the licensee has misinterpreted the language of the rule. The rule, as drafted, does not explicitly require anything more than a written document from which a licensee could ascertain the charges that they have incurred. Presumably, a licensee could initially prepare a written document that listed charges for individual services and then provide a patient with a copy of the services rendered on a given date of providing the goods or services. The written form provided in the example is reasonably calculated to notify the patient of the actual charges for the goods or services provided. Accordingly, no action shall be taken. The rule has been proposed for promulgation under proposed Chapter 77, concerning Professional Conduct under proposed rule §77.3.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§77.1. Definitions.

§77.2. Publicity.

§77.3. Miscellaneous.

§77.5. Misleading Claims.

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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

CHAPTER 78. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §78.1, §78.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 78, §78.1 and §78.2, concerning Chiropractic Radiologic Technologists. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeals will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization.

Comments on the proposed repeals and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§78.1. Registration of Chiropractic Radiologic Technologists.

§78.2. Definitions.

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

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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

CHAPTER 79. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.1, §79.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 79, §79.1 and §79.3, concerning Licensure of Certain Out-of-State Applicants. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeals will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

These repeals were proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization.

Comments on the proposed repeals and/or a request for a public hearing on the proposed repeals may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§79.1. General Requirements for Licensure of Certain Out-of-State Applicants.

§79.3. General Requirements for Licensure of Certain Military Spouses.

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

Filed with the Office of the Secretary of State on September 9, 2014.

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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §§80.1 - 80.3, 80.5, 80.7, 80.9, 80.11, 80.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 80, §§80.1 - 80.3, 80.5, 80.7, 80.9, 80.11 and 80.13, concerning Professional Conduct. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization. Comments were received concerning the rewording of this rule, and those comments will be addressed in the appropriate corresponding new rules section.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, at 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705 or by e-mail to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§80.1. Delegation of Authority.

§80.2. Default on Student Loans and Scholarship.

§80.3. Request for Information and Records from Licensees.

§80.5. Maintenance of Chiropractic Records.

§80.7. Out-of-Facility Practice.

§80.9. Rules to Prevent Fraud.

§80.11. Code of Ethics.

§80.13. Prepaid Treatment Plans.

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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Bryan D. Snoddy
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Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

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CHAPTER 81. RULEMAKING

22 TAC §81.1, §81.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 81, §81.1 and §81.3, concerning Rulemaking. The repeals are necessary in order to clarify, retitle and reorganize new rules regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed repeals are in effect, the public benefit expected as a result of the proposed repeals will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeals do not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. No comments were received concerning the repeal of these rules and their reorganization. Comments were received concerning the rewording of this rule, and those comments will be addressed in the appropriate corresponding new rules section.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, at 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705 or by e-mail to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the repeals.

§81.1. Definitions.

§81.3. Petition for Adoption of Rules.

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

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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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CHAPTER 71. RULEMAKING

22 TAC §71.1, §71.2

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 71, §71.1 and §71.2, concerning Rulemaking.

The new rules in Chapter 71 will implement the retitling and reorganization of the Board rules in current Chapter 81 to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§71.1. Definitions.

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

(1) APA--Administrative Procedure Act, Government Code, Chapter 2001.

(2) Board--The Texas Board of Chiropractic Examiners.

(3) Person--An individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(4) Rule--A statement by the Texas Board of Chiropractic Examiners of general applicability that:

(A) implements, interprets or prescribes law or policy; or describes the procedure or practice requirements of the Board;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of the Board and not affecting private rights or procedures.

§71.2. Petition for Adoption of Rules.

(a) As authorized by the APA, §2001.021(a), an interested person by petition to the Board may request the adoption of a rule.

(b) Form for submission. A person must submit a petition for adoption of rules in writing via mail, fax, e-mail, or hand-delivery to the Executive Director or General Counsel of the Board. The petition shall contain the following information as applicable and except as may be waived by the Board:

(1) the name and contact information of the petitioning party and his or her interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the Board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(c) Consideration and Disposition. During the sixty (60) day period following receipt of the petition by the Board, the Rules Committee shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the Board shall notify the petitioning party in writing of the date, time and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the Rules Committee, at the Committee's discretion.

(2) The Committee, at the conclusion of the meeting, shall decide whether to deny the petition or to recommend to the Board at the next board meeting to publish the requested rule in the Texas Register for comment. If the Committee decides to deny the petition, the Committee shall state its reasons for denial in writing to the petitioning party. A recommendation by the Rules Committee to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the APA.

(3) At the next board meeting following the Rules Committee meeting, the Board shall consider the Rules Committee's recommendation. The Board shall then decide whether to deny the petition or to publish the requested rule in the Texas Register for comment. If the Board decides to deny the petition, the Board shall state its reasons for denial in writing to the petitioning party.

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 72. APPLICATIONS AND APPLICANTS

22 TAC §§72.1 - 72.12

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 72, §§72.1 - 72.12, concerning Applications and Applicants.

The new rules in Chapter 72 will implement the retitling and reorganization of the Board rules in current Chapter 71 to provide concise and clear guidance to the public and licensees.

Current rule §75.25 is displaced to proposed rule §72.4 without modification as a more appropriate location.

This new chapter was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. Comments were received concerning rules under former Chapter 71.

One licensee requested a rewording of current rule §71.2(d) for readability. The Board believes that the suggestion adds clarity and adopts the suggested language under proposed rule §72.2(d).

The licensee also addresses current rule §71.2(f) as poorly worded because it "would require even accidentally false information (e.g. transposition errors) to result in automatic denials (e.g. shall be denied)." The Board does not share the licensee's concerns. False information is an apt description to reflect that the application should contain accurate and true information.

Further, the licensee pontificates that modifying the language of current rule §71.2(f) to "substantially false" would permit staff to have more leeway in correcting errors. The Board would not join in this rationale. The determination of whether an error was substantial or not would soak up already limited staff hours and would shift the burden from those most capable of ensuring complete, accurate and true applications to the staff which has the least capacity to absorb additional procedures.

A licensee also suggested modification of current rule §71.6 to ease the restrictions on applicants from having to take and pass Parts I, II, III, IV and physiotherapy of the National Board Examination and the Board's jurisprudence examination. The suggested change would exempt those previously licensed by the Board from being required to pass additional examinations beyond what they initially passed when the originally became licensed. The Board appreciates this suggestion, but does not believe it should be promulgated into the rule because the Board has a duty to ensure the public health and welfare. The Board believes that a doctor who leaves practice and returns will benefit from the additional knowledge gained and that the examinations ensure that doctors are fully and adequately trained to provide high quality healthcare to members of the public in a safe and efficient manner.

A licensee suggested that the Board modify current rule §71.15, concerning Recognized Specialties, commenting that licensees would benefit from being able to describe themselves more particularly in advertising. This rule was also proposed for repeal. The Board believes that it is not proper to continue specifically recognizing specialties. Current rule §71.15 was proposed for permanent deletion to avoid the recognition of some specialities but not others. Under current rule §77.2(g), "'Board Certified'" or similar terminology" addresses a licensee's use of a specialty designation and provides adequate protection of the public health and welfare. The Board is thus relieved of the disconcerting task of favoring one certifying entity over another by explicit recognition of any certain certifying entity. Further, the Board remains cognizant of attendant first-amendment rights concerning free-speech and coincident obligations to follow the law under §201.155 of the Texas Occupations Code.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§72.1. Definitions.

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

(1) Applicant--An individual who applies for licensure as a chiropractor.

(2) Board--The Texas Board of Chiropractic Examiners.

(3) Board member--One of the appointed members of the decision-making body defined in this section as the board.

(4) Chiropractic Act--Texas Occupations Code Chapter 201.

(5) Examinee--An applicant who has been approved, admitted to, and/or has taken the examination given by the board.

§72.2. Application for License.

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board.

(b) An applicant for licensure through examination shall submit to the Board a written application, on a form provided by the

Board. The information contained in the application shall be verified by affidavit of the applicant. Along with the application, an applicant shall also submit a nonrefundable fee for verification of educational courses/grades for college and a nonrefundable examination fee, as provided by §78.6 of this title (relating to Fees and Charges for Public Information). Upon successfully passing the examination, an applicant shall submit a fee for a new license as provided in §78.6 of this title. The amount of the fee shall be prorated from the month of examination to the birth month of the applicant.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board upon request.

(d) Within 30 days of receiving the completed application, required supporting materials, and required fees, the board shall provide to the applicant a notification of the applicant's status regarding their qualification to take the jurisprudence examination.

(e) The filing of an application and tendering of the fees to the board shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, Occupations Code §201.501.

§72.3. Qualifications of Applicants.

(a) All applicants must comply with the application process and license requirements in the Chiropractic Act, Subchapter G of Chapter 201 of the Occupations Code.

(b) The board may deny an application for a chiropractic license if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing. For the purposes of this subsection, "good standing" means that the applicant has:

(1) entered into an agreement with the administering entity to:

(A) repay the student loan;

(B) perform the service obligation; or

(C) pay any damages required by the student loan repayment contract or scholarship contract; or

(2) taken other action resulting in the applicant no longer being in default on the loan or in breach of a repayment or scholarship contract.

(c) For each student admitted a Chiropractic College must document and retain evidence in the student's file regarding the basis upon which the student was judged to be qualified for admission, and clearly inform the student at the time of admission that limitations of practice venue and licensure might occur. Students must demonstrate that qualifications for student acceptance and resultant enrollment are appropriate to the program objectives, goals and educational mission of the program or institution. Each student admitted to begin the study of chiropractic on the basis of academic credentials from institutions within the United States must meet the following requirements:

(1) All applicants must furnish proof of having earned a minimum of 90 semester hour credits of courses at an institution or institutions accredited by a nationally recognized agency not including courses included in a doctor of chiropractic degree program.

(2) All applicants must present proof of graduation from a bona fide Chiropractic College that is accredited by chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.

§72.4. Impaired Licensees and Applicants.

(a) The board shall require a licensee or applicant to submit to a mental and/or physical examination by the appropriate health care provider designated by the board if the board has probable cause to believe that the licensee or applicant is impaired. An impaired licensee or applicant is considered to be one who is unable to practice chiropractic with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(b) Probable cause may include but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, that a certain licensee or applicant is impaired;

(2) evidence that a licensee or applicant left a treatment program for alcohol or chemical dependency before completion of that program;

(3) evidence that a licensee or applicant is guilty of intemperate use of drugs or alcohol;

(4) evidence of repeated arrests of a licensee or applicant for intoxication or offenses in which intoxication is a factor;

(5) evidence of recurring temporary commitments to a mental institution of a licensee or applicant;

(6) chiropractic records and/or medical records showing that a licensee or applicant has an illness or condition which results in the inability to function properly in his or her practice; or

(7) medical records evidencing a mental or physical condition of the licensee or applicant.

§72.5. Approved Chiropractic Schools and Colleges.

(a) The board may annually review and approve those chiropractic schools whose graduates are eligible for examination and licensure under Subchapter G of the Chiropractic Act.

(b) A bona fide reputable chiropractic school as that term is used in Subchapter G of the Chiropractic Act is a school which is accredited by a chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.

§72.6. Time, Place, and Scope of Examination.

(a) All applicants shall take and pass Parts I, II, III, IV and Physiotherapy of the National Board Examination and the board's Jurisprudence Examination.

(b) The passing score on each part of the National Board Examination is 375. The passing score for the Jurisprudence Examination is 75%.

(c) Regular jurisprudence examinations for licensure shall be given during the calendar year at the discretion of the board. All examinations shall be conducted in the English language. The board shall set the date, time, and place of each examination.

(d) An applicant may not take the Jurisprudence Examination unless the applicant has successfully completed all parts of the National Board Examination which are required by the board.

(e) Examinees shall not be permitted to bring any books, notes, journals, or other help into the examination room, nor to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within hearing of a designated representative of the board; nor shall an examinee leave the examination room except when so permitted by the presiding examiner. Violations of this rule shall subject the offender to expulsion.

(f) A license shall not be issued by the board to any examinee who has been detected in a deceptive or fraudulent act while an examination is in progress.

(g) One member of the board or a designee of the board shall at all time be in the examination room while the examination is in progress and no persons except examinees, board members, employees of the board or persons having the express permission of the board shall be permitted in the examination rooms.

(h) When examination papers are delivered to the presiding examiner they become the property of the board or an agency designated by the board and shall not be returned to the examinee. All test papers must be retained by the board or an agency designated by the board to be preserved for a period of one year after final grading in order to allow an examinee the opportunity to request an analysis of such person's performance, which request must be made in writing.

(i) Each applicant having a passing score must request from the National Board that a true and correct copy of the score report showing the results of each part of the National Board Examination be sent to the board.

§72.7. Jurisprudence Examination.

(a) An applicant may not take the Jurisprudence Examination unless he or she has complied with all the requirements in the Chiropractic Act, Occupations Code §§201.302 - 201.304, including having fulfilled the educational requirements of Occupations Code §201.303.

(b) Examinees will be examined on the laws and board rules governing the practice of chiropractic in this state.

(c) The type of questions will be true-false, multiple choice, or essay. Certain time periods shall be assigned to each subject for completion.

(d) The discretion of the board on examination matters, including grades, is final.

§72.8. Failure to Appear at Jurisprudence Examination.

(a) If an applicant notifies the board no later than one day prior to the date of examination that he or she is unable to take the examination, the board will apply the examination fee to a subsequent application to take the examination.

(b) If an applicant fails to appear for a scheduled examination without prior notice to the board, the applicant must pay another examination fee when he or she applies for a subsequent examination unless the board excuses the non-appearance as provided in subsection (c) of this section.

(c) An applicant who fails to appear for examination without prior notice may be excused for illness, death in the immediate family, disabling traffic accident, court appearance, jury duty, or military duty, or other extenuating circumstances beyond the control of the applicant. The applicant must submit to the board a notarized affidavit setting out the reasons for not appearing, along with any supporting documents, no later than 14 days after the examination date. Documentation for medical absences must have the original signature of the medical practitioner. Stamped signatures will not be accepted.

§72.9. Reexaminations.

(a) An examinee who fails to pass the examination shall be permitted to take a subsequent examination, provided the examinee applies for reexamination and pays a reexamination fee as provided in §78.6 of this title (relating to Fees). An examinee shall be required to make a grade of 75% or better on any subsequent examination.

(b) An applicant may take the jurisprudence examination no more than twice in one calendar year. If an applicant fails to achieve a passing score after the second attempt, the applicant must reapply by submitting a new application and required materials and fees, as provided in §72.2 of this title (relating to Application for License).

§72.10. Disqualification To Take Jurisprudence Examination.

(a) An applicant who wishes to take an examination given by the board but who has been disqualified for failure to comply with this chapter (relating to Applications and Applicants), or for failure to meet the requirements of the Chiropractic Act, shall be entitled to a hearing upon written request to the board by the applicant.

(b) The applicant shall be given at least ten days notice of the date, time, and place of the hearing unless such notice is waived in writing by the applicant. A hearing under this section is subject to the Administrative Procedure Act.

§72.11. Temporary Faculty License.

(a) The board may issue a temporary faculty license to a person that meets the requirements set forth under Texas Occupations Code §201.308.

(b) An applicant for a temporary faculty license under this section shall apply to the board, in writing, on a form prescribed by the board, prior to beginning work at the sponsoring school. The application shall be submitted on the applicant's behalf by the sponsoring school and shall be signed by either the dean of the chiropractic school or the president of the institution.

(c) In order to receive a license under this section, a person must sign and agree to the following oath: "I affirm that I have read and that I am familiar with the Texas Chiropractic Act and the Board's rules. I affirm that I will abide by the requirements of the Act and the Board's rules while practicing under this license. I acknowledge that this license grants me a limited privilege to practice chiropractic in Texas and that while practicing under this license I will be subject to the oversight and disciplinary authority of the Board and my sponsoring chiropractic school."

(d) A person practicing under a temporary faculty license may either apply for a renewal of that license or apply for a permanent unrestricted license as provided for under this chapter. If a person has filed either an application for renewal or an application for a permanent unrestricted license, a person may continue to practice under an expired temporary faculty license while the board is evaluating the person's application and while waiting for the results of any examination required for permanent licensure.

§72.12. Criminal History Evaluation Letters.

(a) Authority. A person may request the Board to issue a criminal history evaluation letter regarding the person's eligibility for a license as authorized by Chapter 53 of the Texas Occupations Code.

(b) Eligibility. Only a person planning to enroll in or who is enrolled in chiropractic school and who has reason to believe that the person is ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense may request the criminal history evaluation letter.

(c) Request. The request must include:

(1) A completed Board request form available from the Board;

(2) A statement by the person of the basis for the person's potential ineligibility;

(3) The required fee set out in §78.6 of this title (relating to Required Fees and Charges);

(4) Official copies of all court documentation regarding a conviction or deferred adjudication which the person believes may make that person ineligible for licensure; and

(5) A statement from the approved vendor submitting the applicant's fingerprints to the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) that the person has requested DPS and the FBI to provide a criminal history report to the Board based on fingerprints submitted by the person.

(d) Investigation. The Board has the same powers to investigate a request submitted under this section and the person's eligibility that the Board has to investigate a person applying for a license. The Board may request additional information from the person in order to complete the investigation. The person must timely respond to requests from the Board.

(e) Issuance of Letter. The Board will issue a letter stating the Board's determination as to eligibility within 90 days of the receipt of the items listed in subsection (c) of this section and receipt of the criminal history report on the person from DPS and the FBI. The 90 day period may be extended if the person has not timely provided information requested by the Board. The letter will specifically state either that the Board has determined that a ground for ineligibility does not exist or that the Board has determined that a ground for ineligibility does exist and will set out each basis for potential ineligibility.

(f) Limitation of Board's Determination. In the absence of new evidence known to but not disclosed by the person or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the person's eligibility with respect to the grounds for potential ineligibility set out in the letter. The letter is limited to the law in effect on the date the letter is issued and the facts known to the Board at the time the request is submitted and the letter is issued.

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 73. FACILITIES

22 TAC §§73.1 - 73.5

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 73, §§73.1 - 73.5, concerning Facilities.

The new rules in Chapter 73 will implement the retitling and reorganization of the Board rules in current Chapter 74 to provide concise and clear guidance to the public and licensees.

This new chapter was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. Comments were received concerning rules under former Chapter 74.

A licensee commented on current rule §74.2(c)(1), concerning Facility Registration Requirements. The comment noted that a modification to the rule should be made to permit the facility owner to submit an email address. The Board finds that this comment is already occurring in practice as facility registration applications have a place on the application form to list electronic-mail address contact information.

The licensee also commented on current rule §74.2(j) requesting that the Board note that the notifications of expiration of a facility's license occurs as a courtesy so that it is clear to facility owners that if a notice is not received that they are not relieved of their duty to maintain a current registration. The Board finds that this comment is well-considered and proposes the language to add additional clarity to the proposed rule §73.2(j).

The Board through its Rule Committee in a July 29, 2014 public meeting discussed the need to provide guidance in current rule §74.3 for licensees and facility owners in terminating operations for a facility. The underlying rationale was to avoid the result of facilities that close without the public being given proper notice and the loss of oversight by the Board to address any pending issue that surround the cessation of chiropractic services. The Board proposes the language added to proposed rule §73.3(j) to accomplish this purpose.

A license also commented that a modification of current rule §74.9(a) would serve to provide additional clarity in the rules. The present language notes that administrative penalties may be levied against a facility owner for a violation by an employee, agent or other representative of the facility. The modified language would make it clear that "any" employee, agent or other representative of the facility could engage in a violation for which the facility owner may have responsibility. The Board believes that this modification adds clarity and accordingly adopts the change in language to proposed rule §73.5(a).

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to

Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§73.1. Definitions.

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

(1) Board--Texas Board of Chiropractic Examiners.

(2) Chiropractic Act--Occupations Code, Chapter 201.

(3) Chiropractic Radiologic Technologist (CRT)--A person who is registered with the board under Chapter 74 of this title (relating to Chiropractic Radiologic Technologists).

(4) Facility--An office, clinic or other place of business that provides chiropractic services by or under the direction of a doctor of chiropractic licensed by the board.

(5) Health Professions Council Act (HPCA)--Occupations Code, Chapter 101.

(6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas.

(7) Medical Radiologic Technologist Certification Act (MRTCA)--Occupations Code, Chapter 601.

§73.2. Facility Registration Requirements.

(a) A facility shall not provide chiropractic services without first being registered by the board.

(b) An applicant for a facility registration shall submit to the board an application as prescribed by the board, along with the facility registration fee as provided in §78.6 of this title (relating to Required Fees and Charges). The application must be signed by the owner, if a sole proprietorship, or by an authorized representative, if a partnership or corporation.

(c) The following information shall be included in the application and upon renewal:

(1) the legal name of the facility and street address, and telephone and facsimile numbers for the facility;

(2) the type of legal entity (sole proprietorship, partnership, corporation);

(3) the name, address, and percentage of ownership of each person with a 10% or greater ownership interest in the facility; if a person is an individual, include the person's social security number, driver's license number, date of birth, and if a licensee, his or her license number;

(4) the name and license number of each doctor licensed by the board who is employed or otherwise engaged to provide chiropractic services at the facility; and

(5) any other information requested by the board that it deems necessary for processing the application or for other regulatory purposes.

(d) Social security numbers are collected for purposes of child support collection and student loan enforcement.

(e) A facility owner must be 21 years of age or older.

(f) Facilities that share office space or staff but otherwise maintain separate business identities, including billing, accounting and other functions, shall be treated as separate facilities and a registration and registration fee will be required for each facility.

(g) No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(h) This chapter does not apply to hospitals or public health clinics registered with the Department of State Health Services or another state agency.

(i) The board may deny an application for a facility registration by a sole proprietor or partnership if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants).

(j) As a courtesy, at least 30 days prior to the expiration of a facility's certificate of registration, the Board shall send written notice of the impending expiration to an owner of a facility and to each chiropractor practicing in said facility. Failure of a facility owner and/or chiropractors practicing in said facility to receive such written notice shall not affect the renewal date of said certificate of registration.

(k) A licensee who practices chiropractic in a facility that the licensee knows is not registered under this chapter is subject to disciplinary action as provided in §78.9 of this title (relating to Disciplinary Guidelines).

§73.3. Annual Renewal of Facility Registrations.

(a) On or before the designated renewal date each year, a registered facility shall renew its certificate of registration, by submitting:

(1) a facility renewal form as prescribed by the board;

(2) complete information as required on the form, including changes in information since the original application or last renewal;

(3) for a facility that is not owned by a licensee, the following additional information shall be submitted:

(A) the hours of operation for each clinic;

(B) the names and working hours at each clinic for each licensed chiropractor; and

(C) the names and working hours at each clinic for all other personnel; and

(4) the facility registration fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(b) A facility registration expires on:

(1) the first day of the owner's birth month if solely owned by a licensed chiropractor;

(2) the first day of the majority owner's birth month, if owned by more than one licensed chiropractor. If a facility is owned equally by more than one licensed chiropractor, the facility registration

expires on the first day of the birth month of the owner listed first on the facility application; or

(3) September 1 if owned by a corporation or someone other than a licensed chiropractor.

(c) If a facility's certificate of registration has expired, the facility may renew its registration by submitting to the board all of the items required by subsection (a) of this section and a late fee of $50.00; if the facility's certificate of registration has expired for more than 90 days, a late fee of $100.00 must be submitted.

(d) A facility owner that fails to renew the facility's registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in §73.5 of this title (relating to Disciplinary Action for Facility Owners).

(e) If a facility's certificate of registration has been expired for more than one year, the Board may close the facility's file.

(f) A facility shall not provide chiropractic services without a current certificate of registration. Operating a facility with an expired certificate of registration constitutes operating a facility without a certificate of registration.

(g) The board shall not renew a facility registration of sole proprietor or partnership if the sole proprietor or a partner is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided by §75.2(c) of this title (relating to Renewal of Chiropractic License). The board may refuse to renew a facility registration of a sole proprietor or partnership if it receives information from an administering entity that the registrant, including a partner, has defaulted on a student loan other than a TGSLC loan, or breached a repayment contract relating to a student loan other than a TGSLC loan or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the registrant whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants). Upon notice that a registrant is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement, the board may suspend the registration or take other disciplinary action as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(h) Opportunity for hearing:

(1) the board shall notify a registrant, in writing, of the nonrenewal of a registration under subsection (g) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) upon written request for a hearing by a registrant, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A registrant shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(i) A registration which is not renewed under subsection (g) of this section is considered expired.

(j) When a chiropractic facility ceases providing chiropractic services, the owner shall notify the Board in writing not later than 30 days following the date the facility ceased providing chiropractic services advising of the facility's closure and provide the custodian of records' contact information.

§73.4. Rules of Conduct for Facility Owners.

(a) An owner of an unregistered facility or a facility with an expired registration that continues to provide chiropractic services shall be subject to the same sanctions as a license holder who violates the Chiropractic Act or Board rules.

(b) No facility owner or employee, other than the primary treating doctor of chiropractic, shall control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor with respect to patient care and treatment.

(c) A facility shall maintain a current street address with the board. A different mailing address may be provided in addition to the street address. A facility shall notify the board, in writing, of any change in street or mailing address or ownership within 30 days of the change. The notification shall be signed by the owner or authorized representative of the facility and must include the facility registration number.

§73.5. Disciplinary Action for Facility Owners.

(a) The board may refuse to issue or renew, suspend, or revoke a facility registration and/or impose an administrative penalty against an owner of a registered facility for a violation, by any employee, agent, or other representative of the facility, including a licensee or CRT employed or otherwise engaged by the facility, of the following:

(1) the rules or an order of the board;

(2) the Chiropractic Act;

(3) the HPCA;

(4) the MRTCA;

(5) the rules or an order of the TDH; or

(6) any other rule or statute, for which the board may impose disciplinary action if violated.

(b) Disciplinary action against an owner of a facility or a chiropractor working in a facility, including the imposition of administrative penalties, is governed by the Administrative Procedures Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Chiropractic Act, Occupations Code, Chapter 201, including Subchapters G and K through M.

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

Filed with the Office of the Secretary of State on September 9, 2014.

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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

CHAPTER 74. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §74.1, §74.2

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 74, §74.1 and §74.2, concerning Chiropractic Radiologic Technologists.

The new rules in Chapter 74 will implement the retitling and reorganization of the Board rules in current Chapter 78 to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§74.1. Definitions.

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

(1) Board--The Texas Board of Chiropractic Examiners.

(2) Chiropractic Radiologic Technologist (CRT) or Registrant--A person who is registered with the board under this chapter.

(3) Licensee or Chiropractor--A person who is licensed by the board to practice chiropractic in the State of Texas.

(4) Medical Radiologic Technologist Certification Act--Occupations Code, Chapter 601.

(5) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

§74.2. Registration of Chiropractic Radiologic Technologists.

(a) Registration required. Any person performing radiologic procedures in a chiropractic facility must register with the board, on a form prescribed by the board. This section does not apply to registered nurses or to persons certified under the Medical Radiologic Technologist Certification Act.

(b) Eligibility. An applicant for registration must either:

(1) submit proof of the applicant's registry with the Texas Department of State Health Services (DSHS) and completion of training and instruction as required by 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(2) perform radiologic procedures for a licensee to whom a hardship exemption was granted by DSHS within the previous 12 months under 25 TAC §140.520 (relating to Hardship Exemptions).

(c) Application submission. An applicant shall submit an application for registration, proof of status as provided in subsection (b) of this section, along with the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(d) Renewal. On or before January 1 of each year, a CRT shall renew his or her registration, by submitting:

(1) a registration application;

(2) the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges); and

(3) proof of renewal status as provided in subsection (b) of this section.

(e) Expired registration.

(1) A CRT registration expires on January 1 of each year if it is not timely renewed.

(2) If a CRT's registration has expired, a person may renew his or her registration by submitting to the board all of the items required by subsection (d) of this section and a late fee of $25.

(3) A person who fails to renew his or her registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in subsection (h) of this section.

(f) Incomplete applications. No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(g) DSHS authorization. A person may not perform radiologic procedures if that person is removed from the DSHS registry or the hardship exemption under which the person is working is expired or revoked even if the person holds a valid CRT registration with the board. A CRT must provide to the board a copy of a hardship exemption granted by DSHS within five days of its issuance if the exemption is granted prior to the registration renewal deadline.

(h) Disciplinary sanctions. The board may refuse to issue or renew, suspend, or revoke a CRT registration and/or impose an administrative penalty for the following:

(1) violation of the rules or an order of the board;

(2) violation of the Medical Radiologic Technologist Certification Act;

(3) violation of the rules or an order of DSHS;

(4) violation of the Texas Chiropractic Act; or

(5) nonpayment of registration fees.

(i) DSHS compliance. All registrants shall comply with the rules of DSHS for the control of radiation.

(j) Supervision required. A CRT shall perform radiological procedures only under the supervision of a licensee physically present on the premises.

(k) Cineradiography. Procedures that include cineradiography are limited to use by a licensee who has passed a course in its use, approved by the board.

(l) Non-static procedures. Any non-static procedure has the potential to be more dangerous and hazardous and by definition may only be performed by a licensee or a certified medical radiologic technologist.

(m) Licensee responsibility. A licensee shall not authorize or permit a person:

(1) who is not registered under this section to perform radiologic procedures on a patient unless otherwise authorized under the Medical Radiologic Technologist Act or 25 TAC Chapter 140, Subchapter J (relating to Medical Radiologic Technologists); or

(2) to perform radiologic procedures on a patient if that person has been removed from the registry of DSHS or the licensee's hardship exemption has been revoked or has expired.

(n) Licensee compliance. A licensee shall comply with the Medical Radiological Technologist Certification Act and all applicable rules of DSHS.

(o) Laws governing disciplinary action. Disciplinary action against a CRT, including the imposition of administrative penalties, is governed by the Administrative Procedures Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Texas Chiropractic Act, Occupations Code, Chapter 201, including Subchapters K through M.

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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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

CHAPTER 75. LICENSES AND RENEWALS

22 TAC §§75.1 - 75.7

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 75, §§75.1 - 75.7, concerning Licenses and Renewals.

The new rules in Chapter 75 will implement the retitling and reorganization of the Board rules in current Chapter 73 to provide concise and clear guidance to the public and licensees.

Current rule §71.12 is displaced to proposed rule §75.3 without modification as a more appropriate location.

This new chapter was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. Comments were received concerning rules under former Chapter 74.

One licensee commented that a restatement of current rule §73.1 would aid in readability. The Board agrees and adopts a modified version of the rewording as proposed rule §75.1.

The license also commented on the belief that a restatement of current rule §73.2 would aid in readability. The Board agrees and adopts a modified version of the rewording as proposed rule §75.2.

Additionally, the Board through its Rules Committee held a discussion and recommended a modification to current rule §73.2(a) to rectify an internal discord between current rule §73.2(a) that provides that renewal certificates are not to be issued until the requirements of the section are met and current rule §73.5 that provides a licensee that does not meet continuing education requirements shall be placed upon a 12-month probationary status. The Board added additional clarifying language to proposed rule §75.2(a) to resolve the inconsistency in a manner that conserves and best utilizes limited staff resources.

Another licensee commented that the requirements for continuing education under current rule §73.3 should be changed to 24 to 32 hours every two year relicense period. The licensee also suggested that a chiropractor that had practiced 25 years or more in Texas or another state that wishes to practice in Texas should be allowed a reduction in license fee or the number of required continuing education hours reasoning that "they have earned this consideration for many years of service in the chiropractic profession."

The Board does not agree. First, the rules regarding number of continuing education hours have been and are set to ensure that all chiropractors that practice in Texas are fully qualified to provide safe and efficient care to the public. Modifying the hourly requirements to a lower requirement or making the hour requirements less systematic are not in the interest of public safety and welfare. Further, the concerns extend to those that have practiced for 25 years or more. Finally, even though some chiropractors may have practiced for longer than 25 years, especially for those who have practiced out of state, the Board should ensure that chiropractors are qualified to practice and provide high-quality care at all times during their years of service in the profession.

Another license also suggested changes to current rule §73.3 to include a "1-2 hour in-person TBCE 'sermon hour,'" a certain number of "foundational hours" to be received in a limited number of Board dictated topics each year, up to ten (10) other hours from an approved list of courses on any topic covered by rule §73.7 and up to four (4) hours from another source such as traditional medical practice. The Board would note that the licensee's concerns have been received and will be tendered to the Licensure and Education Committee for appropriate discussion and consideration.

The license further identifies current rule §73.4(e) and (f) for rewording. The Board agrees with the licensee's concerns and the proposed language was tendered to the Rules Committee for appropriate discussion and consideration as reflected in proposed rule §75.4.

Further, based upon an inquiry by a stakeholder, the Board through its Rules Committee held a discussion and recommended a modification to current rule §73.4 to extend the period that a licensee may remain inactive to 20 years provided that certain conditions were met that ensured public welfare and safety. The Board added language to proposed rule §75.4 to accomplish this task and remain in compliance with statutory provisions.

Finally, the licensee comments that "and" should be changed to "or" in current rule §73.7(h)(3) to reflect "true continuing education [that] could be had in ALL THE SCIENCES associated with chiropractic and not just chiropractic scope only...." It was also felt that §73.7(j)(4) was restrictive and not permissive, thus it was demeaning to professionals. The Board notes that licensee's concerns and acknowledges that some wording may be modified to improve readability and clarity, however the suggested language does not appear to aid in these aims.

Additionally, the Board through its Rules Committee held a discussion and recommended a modification to current rule §73.3 to determine the appropriate number of required continuing education hours, whether they may be taken online and whether a licensee could maintain their license in an inactive status if they did not complete the Medicare continuing education component prior to their second renewal period. Proposed rule §75.5 was substantially modified to reflect the Board's wishes to see an emphasis on instruction of Board rules, provided additional flexibility in delivery format and qualified presenters and to address the inconsistencies in current rule §73.3.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§75.1. Notification and Change of Address.

(a) Licensees shall maintain a current physical home and business address with the Board. In addition, a different mailing address may be provided beyond that of the home and business address. Within 30 days of a change in any of these addresses, a licensee shall notify the Board of the change in writing via U.S. mail, electronic-mail, facsimile, or other written communication. The notification of address change shall clearly and legibly identify the licensee, the address to be changed, the license number(s) associated with the address, and shall be signed by the licensee(s). A change of address submitted through any of the online registration portals, including Texas.gov, is not valid and must be submitted in writing as indicated within this rule.

(b) The notification shall be signed by the licensee and must include the license number.

§75.2. Renewal of Chiropractic License.

(a) Annual renewal.

(1) Annual renewal of a licensee's license shall be accomplished on or before the first day of the licensee's birth month (first day of the birth month) by submitting:

(A) the license renewal form provided by the board;

(B) the renewal fee for an active license as provided in §78.6 of this title (relating to Required Fees and Charges);

(C) any late fees, if applicable, as provided in subsection (h) of this section; and

(D) verification of continuing education attendance as required by §75.5 of this title (relating to Continuing Education).

(2) Except as provided in §75.6 of this title (relating to Failure to Meet Continuing Education Requirements), incomplete submission of any of the information required for renewal shall not constitute a completed annual renewal and an annual renewal certificate shall not be issued.

(3) Prior to the due date for an annual renewal, a licensee may instead apply for inactive status in accordance with §75.4 of this title (relating to Inactive Chiropractic License Status).

(b) Locum tenens information.

(1) A licensee who substitutes as the treating doctor for another licensee in the facility of the absent licensee shall, along with the information required for annual renewal, provide a list of facilities in which they served as a locum tenens doctor during the past twelve month period.

(2) A licensee serving as a locum tenens doctor shall have proof of licensure readily available when requested. Proof of licensure may include:

(A) a copy of the current license renewal certificate; or

(B) a copy of the wallet size license.

(3) The locum tenens list shall include the following for each facility:

(A) licensee's name;

(B) facility physical address; and

(C) facility registration number displayed on the current facility registration card.

(4) If a facility registration number is not provided, a locum tenens doctor shall report the facility registration number as "not available." Licensees for whom facility numbers are reported as "not available" may be subject to investigation for the operation of an unregistered facility.

(c) Licensees in default of TGSLC student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraph (2)(B) or (3) of this subsection.

(d) Licensees in default of other student loans or scholarship obligations.

(1) This subsection applies to a licensee in default of a student loan other than a loan guaranteed by the TGSLC, in breach of a loan repayment agreement other than one related to a TGSLC loan, or in breach of any scholarship contract.

(2) The board may refuse to renew a chiropractic license if it receives information from an administering entity that the licensee has defaulted on a student loan or has breached a student loan repayment contract, or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the licensee whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants).

(e) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement under subsections (c) or (d) of this section, the board may suspend the license or take other disciplinary action as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(f) Opportunity for hearing.

(1) The board shall notify a licensee, in writing, of the nonrenewal of a license under subsection (c) or (d) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(g) A license which is not renewed under subsection (c) or (d) of this section is considered expired. Subsections (h) and (i) of this section apply to a license not renewed under subsection (c) or (d) of this section.

(h) Expired license.

(1) If an active or inactive license is not renewed on or before the first day of the licensee's birth month of each year, it expires.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title (relating to Required Fees and Charges).

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title.

(4) Except as provided by paragraphs (5) and (6) of this subsection, if a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state or foreign country and is currently licensed in good standing and has been in practice in the other state or foreign country for two years preceding application for renewal. The person must also pay the board a fee equal to the examination fee, as provided in §78.6 of this title. A person is considered "currently licensed" if such person is licensed by another licensing board recognized by the Board. The Board shall recognize another licensing board that:

(A) has licensing requirements substantially equivalent to the requirements of the Chiropractic Act; and

(B) maintains professional standards considered by the Board to be equivalent to the standards under the Chiropractic Act.

(6) At the board's discretion, a person whose license has expired for one year but not more than three years may renew without complying with paragraph (4) of this subsection if the board determines that the person has shown good cause for the failure to renew the license and pays to the board:

(A) the required renewal fee for each year in which the licensee was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the jurisprudence examination fee, multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the jurisprudence examination fee.

(7) Good cause for the purposes of paragraph (6) of this subsection means extenuating circumstances beyond the control of the applicant which prevented the person from complying timely with subsection (a) of this section, such as extended personal illness or injury, extended illness of the immediate family, or military duty outside the United States where communication for an extended period is impossible. Good cause is not shown if the applicant was practicing chiropractic during the period of time that the applicant's license was expired. With the renewal application, an applicant must submit a notarized sworn affidavit and supporting documents that demonstrate good cause, in the opinion of the board.

(i) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (h) of this section, except for a license which is not renewed under subsection (c) or (d) of this section if the licensee has timely requested a hearing under subsection (f) of this section.

(j) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of the board's request.

§75.3. Temporary Chiropractic License.

(a) A person licensed as a chiropractor in good standing in another state, the District of Columbia, or a territory of the United States may practice chiropractic as defined by the Occupations Code,

§201.002 and provide chiropractic services to individuals, groups, or organizations within the State of Texas for a period of time not to exceed 30 days within a calendar year as provided by this section. A person applying for temporary privileges shall apply in writing, to the board, on a form prescribed by the board, at least 14 days prior to the expected working days in Texas. The executive director of the board, at his or her discretion, may accept an application within a lesser time period if the applicant has submitted a full and complete application. The application must include a description of the chiropractic services to be performed and the event, meeting, or function at which the services are to be performed, identification of the persons to be treated, the specific dates the services are to be performed, and documentation of eligibility as provided in subsection (b) of this section.

(b) An applicant for a temporary license must have a current, active, and unrestricted license, without any pending disciplinary proceedings, as a chiropractor in another state, the District of Columbia, or a territory of the United States. An applicant must submit with the application:

(1) a statement which has a notary seal or a state seal from the appropriate chiropractic licensing agency in another jurisdiction confirming that the applicant has an active license and is in good standing with that jurisdiction, with no pending disciplinary orders or proceedings against the applicant; and

(2) a letter of invitation or other document from the sponsoring entity showing that the applicant is invited or authorized to participate and to provide chiropractic services at a scheduled event, meeting, or other function in Texas.

(c) A person granted temporary privileges under this section shall abide by the rules of the board during the period the privileges are in effect. The granting of a temporary license constitutes limited authority to practice chiropractic in Texas only within the scope of services and in connection with the persons to be treated as described in the application and approved by the executive director. A person granted temporary privileges may not provide chiropractic services to the general public at an event, meeting, or other function, or at any other location in Texas. Violations of the Chiropractic Act, board rules, or the temporary license will subject the temporary licensee to disciplinary action by the board.

(d) This section does not apply to those persons who reside or who are in the process of establishing residence in Texas or who provide or intend to provide chiropractic services primarily in Texas. This section cannot be used as an entry to licensure in Texas.

§75.4. Inactive Chiropractic License Status.

(a) Each year, on or before a licensee's renewal date, a licensee who is not currently practicing chiropractic in Texas may renew his or her license as provided by §75.2 of this title (relating to Renewal of Chiropractic License) and request, on a form prescribed by the board, that it be placed on inactive status. In order to continue on inactive status and to maintain a valid license, an inactive licensee must renew his or her license and make a new request for inactive status each year.

(b) If the application is late, the licensee shall be subject to §75.2(h) of this title. A licensee on inactive status is not required to complete continuing education as provided in §75.5 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

(1) return the current renewal certificate to the board office; and

(2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §75.5 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation. A licensee who has maintained an inactive status with the Board for a period greater than five (5) years may be exempt from compliance with the requirement of this subsection to retake Part IV of the National Board of Examination if they have held an active, unrestricted license in another state or foreign jurisdiction that is held in good standing. In no event shall an inactive status be maintained before this Board in excess of twenty (20) years.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

§75.5. Continuing Education.

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §75.7 of this title (relating to Approved Continuing Education Courses).

(A) A licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. Effective with all doctor of chiropractic licenses renewed on or after July 1, 2009, a minimum of four of the 16 required hours of continuing education shall include topics designated by the board.

(i) A minimum of three hours of the total required continuing education shall consist of a course specifically related to the Board's rules including the Board's code of ethics, recordkeeping, documentation, and coding. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must possess a doctorate degree and must possess either an active license to practice chiropractic or law, be part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education, other qualified health care providers, or individuals with substantial knowledge, skills, and abilities of chiropractic practice. This continuing education may be taken online through a course offered by the board.

(ii) A minimum of one hour of the total required continuing education shall relate to risk management relating to the practice of chiropractic in Texas. For the purpose of this rule, risk management refers to the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating, identifiable risks. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must possess a doctorate degree and must possess either an active license to practice chiropractic or law, be part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education, other qualified health care providers, or individuals with substantial knowledge, skills, and abilities of chiropractic practice. This continuing education may be taken online through a course offered by the board.

(iii) Notwithstanding the requirements in this clause, licensees who were initially licensed on or after September 1, 2012, must complete at least eight hours of continuing education in coding and documentation for Medicare claims no later than their second renewal period unless they are in exempted status as noted in subsection (d) of this section. The eight hours of required continuing education in coding and documentation for Medicare claims may be counted as part of the total of 16 continuing education hours required during the year in which the eight hours were completed.

(iv) In addition, from time to time, the board may issue public memoranda regarding urgent or significant public health issues that licensees need to be aware of. The board will publish such memoranda on the board's web site and distribute the memoranda to the major continuing education providers.

(B) A licensee who serves as an examiner for the National Board of Chiropractic Examiners' Part IV Examination may receive credit for this activity, not to exceed eight (8) hours each year.

(C) No more than six hours or credit may be obtained through online courses.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, www.tbce.state.tx.us, as provided in §75.7(g) of this title. The board will also provide notice of a TBCE Course in its newsletter.

(4) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by completing 16 hours of approved continuing education courses online. Video courses will no longer qualify for credit.

(A) If the licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their continuing education requirements.

(B) In order for an online course to be accepted by the board, a licensee must submit a letter from a licensed doctor of chiropractic, medicine, or osteopathy who is not associated with the licensee in any manner. In the letter, the doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability.

(C) A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code §201.501 and §201.502.

(D) The six hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection.

(c) Verification.

(1) At the request of the Board, a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in their first renewal period.

§75.6. Failure to Meet Continuing Education Requirements.

(a) A licensee who fails to meet the minimum continuing education requirements imposed by §75.5 of this title (relating to Continuing Education) shall have his or her license placed in a probated status for a period of 12 months. Renewal of a license will be issued contingent on compliance with this section.

(b) During probation under this section, a licensee may continue to practice provided that he or she enrolls in, attends and satisfactorily completes the required continuing education requirements within the probationary period.

(c) Upon submission to the board of written verification of the licensee's attendance at and completion of the required continuing education requirements, the board shall fully reinstate the licensee's license.

(d) If a licensee fails to have his or her license reinstated during any probationary period, the licensee's license shall be considered expired from the beginning date of the probationary year, and the licensee must obtain a new license as provided by §75.2 of this title (relating to Renewal of Chiropractic License).

(e) Continuing education courses obtained to satisfy any deficiency in a prior reporting year may not be applied toward the continuing education requirements for the next reporting year.

(f) A licensee may not be placed on probationary status for two consecutive years. If a licensee who was on probationary status under this section for the prior reporting year is in non-compliance with

§75.5 of this title for the current reporting year, his or her license shall be considered expired and shall not be renewed except as provided by subsection (h) of this section.

(g) A licensee subject to subsection (f) of this section shall not practice chiropractic until his or her license is renewed or a new license is obtained as provided by §75.2 of this title.

(h) A licensee subject to subsection (f) of this section may renew his or her license upon completion of all deficient courses and as provided by §75.2 of this title.

§75.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course.

(1) The application shall be on a form provided by the board. The application form must include the course title, subject and description, the number of requested credit hours, the date, time and location of the course, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor.

(2) In addition to the application form, a detailed hour-by-hour syllabus of the course shall be submitted to the board. The syllabus must provide detailed information sufficient to inform the board of the course material being taught in each hour block. If the course is taught by more than one instructor, the syllabus must also list the name of the instructor of each hour block.

(3) Finally, the curriculum vitae of each instructor shall be submitted to the board.

(4) The course application must include proposed advertising defining course content.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee as set by the board for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all courses offered by the sponsor for which board approval is requested will comply with the criteria in this section;

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (j) of this section; and

(3) advertising is consistent with the approved course content.

(e) Approval. The board will notify a sponsor in writing of its decision regarding approval of a continuing education course. Approval of each continuing education course is valid for one calendar year only.

(f) Rejection. The board will notify sponsor in writing of its decision regarding rejection of a continuing education course and shall report the basis for the rejection.

(g) Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §75.5 of this title (relating to Continuing Education).

(h) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a curriculum vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) relate to the chiropractic scope of practice, as defined by the Texas Occupations Code §201.002, and §78.13 of this title (relating to Scope of Practice), or to knowledge necessary for a licensee to comply with §78.2(a)(1)(F) of this title (relating to Diligence and Efficient Practice of Chiropractic); and

(4) be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other public health issues identified by the board as provided under §75.5(b)(2)(A)(iv) of this title.

(i) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(j) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request;

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course;

(7) ensure any advertising of the course adheres to course content approved by the board; and

(8) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(k) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

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

Filed with the Office of the Secretary of State on September 9, 2014.

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Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

CHAPTER 76. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §76.1, §76.2

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 76, §76.1 and §76.2, concerning Licensure of Out-of-State Applicants.

The new rules in Chapter 76 will implement the retitling and reorganization of the Board rules in current Chapter 79 to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§76.1. Requirements for Licensure of Out-Of-State Applicants.

(a) An individual who is licensed in another state or foreign country shall be issued a license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in another state, the District of Columbia, a territory of the United States, or a foreign country, that has licensing requirements that are substantially equivalent to the requirements of the Texas Chiropractic Act, and must furnish proof of such licensure on board forms provided. For the purposes of this chapter, the term "substantially equivalent" means that the jurisdiction from which the doctor is requesting licensure has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(A) scope of practice;

(B) continuing education;

(C) license renewal;

(D) enforcement practices;

(E) examination requirements;

(F) undergraduate education requirements;

(G) chiropractic education requirements.

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

(3) The applicant must not have failed a licensure exam conducted by the Board within the 10 years immediately preceding the date of application for a license.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been, licensed.

(5) The applicant must sit for and pass the Texas jurisprudence examination with a grade of 75% or better.

(6) For the three years immediately preceding the date of the application, the applicant must have:

(A) practiced chiropractic; or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(b) Application and fee. The candidate for licensure will be subject to all application requirements required by §72.2 of this title (relating to Application for Licensure) and subject to the applicable fees established under §78.6 of this title (relating to Required Fees).

§76.2. Requirements for Licensure of Military Spouses.

(a) This section applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(c) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (b) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(1) scope of practice;

(2) continuing education;

(3) license renewal;

(4) enforcement practices;

(5) examination requirements;

(6) undergraduate education requirements; and

(7) chiropractic education requirements.

(d) The Board may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The standard method of demonstrating competency is described in Chapter 72 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(1) education;

(2) continuing education;

(3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the executive director.

(e) The executive director may issue a license by endorsement to an applicant described under subsection (b) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.

(f) The applicant described under subsection (b) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for a license.

(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

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 77. PROFESSIONAL CONDUCT

22 TAC §§77.1 - 77.12

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 77, §§77.1 - 77.12, concerning Professional Conduct.

The new rules in Chapter 77 will implement the retitling and reorganization of the Board rules in current Chapters 77 and 80 to provide concise and clear guidance to the public and licensees.

This new chapter was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013 to March 31, 2014. Comments were received concerning rules under former Chapter 77.

A licensee comments that the definitions for print media and public communication should be replaced or amended. The commenter asserts that "[t]he word 'advertising' identifies the paid, impersonal one-way marketing of persuasive information from an identified sponsor disseminated through channels of mass advertising to promote the adoption of goods, services or ideas.' The word 'mass advertising' is 'advertising designed to reach large numbers of people, by using television, radio, newspapers, the internet, or other media designed to quickly reach large numbers of individuals.'" The licensee comments that print media is suitably understood whereas advertising and mass

advertising do require defining. It is asserted that the Board would better serve the public by "ceasing to attempt to regulate 'any...communication...to...a member of the general public..." and "rather turned its attention to regulating 'paid, impersonal, one-way marketing of persuasive information from an identified sponsor disseminated through channels of mass advertising...." The Board understands the licensee's concerns but notes that the law, specifically §201.155 of the Texas Occupations Code, restricts the Board's authority. By law, the Board is precluded from adopting rules that restrict advertising or competitive bidding except to prohibit false, misleading or deceptive practices by a person regulated by the Board. The Board also may not include in said rules any rule that would restrict the use of any advertising mechanism; the person's personal appearance or use of the person's voice in an advertisement; relates to the size or duration of and advertisement; or the use of a trade name in advertising. The Board's current rules follow the laws requirements, and as such, they should be promulgated in current form as proposed rule §77.1.

Additionally, the Board through its Rules Committee held a discussion and recommended a modification to current rule §80.1 to rectify the concern that no provision allows for notice to the Board of recent graduates practicing at various facilities. The Board added additional clarifying language and minimal reporting requirements to proposed rule §77.5 to provide visibility over recent graduates.

The Texas Chiropractic Association renewed its objection to current rule §80.5, concerning Maintenance of Chiropractic Records. The Board maintains its position as provided in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3228). The rule has been proposed for promulgation as proposed rule §77.8, concerning Records and Documentation herein.

A license also provided comment on current rule §80.7 regarding the out of facility practice rule's application to designated doctors operating under the Texas Department of Insurance, Division of Workers' Compensation system. The licensee noted that they found it impossible to comply with the rule and also noted that the workers' compensation system explicitly requires designated doctors to disclaim the doctor patient relationship. The Board agrees with the licensee's concerns and would note that efforts were previously under discussion to exempt designated doctors working in that capacity from compliance with current rule §80.7. To address the situation, designated doctors are exempted from compliance under proposed rule §77.9(f).

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§77.1. Definitions.

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

(1) Board--The Texas Board of Chiropractic Examiners.

(2) Executive director--The executive director of the Texas Board of Chiropractic Examiners.

(3) Licensee--A person who is licensed to practice chiropractic in the State of Texas by the Texas Board of Chiropractic Examiners.

(4) Print media--Newspapers, magazines, classified telephone directories, city, county, and suburban directories, and all other similar publications.

(5) Public communication--Any written, printed, visual, or oral statement or other communication made to or distributed, or intended for distribution, to a member of the general public or the general public at large.

§77.2. Publicity.

(a) A registered facility or licensee shall not, on behalf of himself, his partner, associate, or any other licensee or facility affiliated with him, use or participate in the use of any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement of claim, or which has the tendency or capacity to mislead or deceive the general public, as defined in §77.4 of this title (relating to Misleading Claims).

(b) In any form of public communication, a licensee or facility shall not describe services that are inconsistent with the practice of chiropractic as described under §78.13 of this title (relating to Scope of Practice).

(c) A licensee or facility engaging in, or authorizing another to engage in telemarketing of prospective patients shall not misrepresent to the person called any association with an insurance company or another doctor of chiropractic or another chiropractic group or facility.

(1) A licensee, facility, or their agent, engaging in telemarketing shall not promise successful chiropractic treatment of injuries or make any other communication which would be prohibited under subsection (a) of this section.

(2) A licensee, facility, or their agent, engaging in telemarketing are required, at the start of each call, to inform the person called who they are (caller's name) and who they represent (clinic/doctor).

(3) A licensee or facility engaging in telemarketing, either directly or through an agent, shall keep a copy of each script used for calling and a log of all calls made that shall include the date, telephone number, and the name of each person called. Such scripts and logs shall be maintained for a minimum of two years.

(d) Licensees or facilities that intend to include a testimonial as part of any form of public communication shall maintain a signed statement from that person or group to support any statements that may be used in any public communication for a minimum of two years from publication of the testimonial.

(e) Licensees or facilities shall clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication.

(f) Licensees or facilities shall be identified as either "doctor of chiropractic," "DC," "chiropractor" or "chiropractic" in all forms of public communication in accordance with §201.002 of the Texas Occupations Code. If each licensee that practices in a facility has identified themselves as required in this subsection, then the facility name need not include "chiropractic" or similar language.

(g) In any form of public communication using the phrase "Board Certified" or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.

(h) In any form of public communication, if a licensee or facility makes a claim based on one or more research studies, the licensee or facility shall clearly identify the relevant research study or studies and make copies of such research studies available to the board or the public upon request.

(i) In any form of public communication, a licensee or facility shall not advertise any service as "free" unless the public communication clearly and specifically states:

(1) all the component services which will or might be performed at the time of, or as part of, the service;

(2) as to each such component service, whether that service will be free or, if not, the exact amount which will be charged for it; and

(3) if a component service is an evaluation, whether the report of findings will be free or, if not, the exact amount which will be charged for the report of findings.

(j) This section and §77.4 of this title apply to all advertising, communications, or telemarketing done by or on behalf of a licensee or facility, including activities conducted by employees, students being mentored by the licensee, or other agents.

§77.3. Patient's Rights to Disclosure of Charges.

(a) A licensee shall, on the date of providing goods or services to a patient, disclose to the patient in writing the full amount of the licensee's charges.

(b) Compliance with this rule may be in any written form reasonably calculated to notify the patient of the actual charges for the goods or services provided.

§77.4. Misleading Claims.

(a) A person advertising chiropractic services shall not use false, deceptive, unfair or misleading advertising, including, but not limited to:

(1) claims intended or reasonably likely to create a false expectation of the favorable results from chiropractic treatment;

(2) claims intended or reasonably likely to create a false expectation of the cost of treatment or the amount of treatment to be provided;

(3) claims reasonably likely to deceive or mislead because the claims in context represent only a partial disclosure of the conditions and relevant facts of the extent of treatment the licensee expects to provide;

(4) claims that state or imply chiropractic services provide a cure for any condition;

(5) claims that chiropractic services cure or lessen the effects of ailments, injuries or other disorders of the human body which are outside the scope of chiropractic practice as defined by Chapter 201 of the Occupations Code and Title 22, Part 3 of the Texas Administrative Code;

(6) claims that state or imply the results of chiropractic services are guaranteed; or

(7) claims that chiropractic services offer results that are not within the realm of scientific proof beyond testimonial statements or manufacturer's claims.

(b) Subsection (a)(2) of this section is not meant to be applicable to circumstances where the cost or amount of treatment varies from an original quotation or advertisement by a reasonable amount.

(c) The standard to be used in determining whether a violation of this rule has taken place is the generally accepted standards of care within the chiropractic profession in Texas.

§77.5. Delegation of Authority.

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of health care tasks to a qualified and properly trained person acting under a licensee's supervision consistent with the health and welfare of a patient and with proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

(1) rendering a diagnosis and prescribing a treatment plan; or

(2) performing a chiropractic adjustment or manipulation.

(c) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations.

(1) For students that have not completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed as part of a regular curriculum; and the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who is physically present in the treating room at the time of the adjustment.

(2) For students that have completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation.

(3) The requirement that the supervising licensee must be physically present in the treating room does not apply to chiropractic college clinics.

(d) A licensee may allow or direct certain recent graduates of an accredited chiropractic college to perform chiropractic adjustments or manipulations. The chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation. A "recent graduate" is one who graduated from a chiropractic college accredited by the Council on Chiropractic Education (CCE) within the previous twelve (12) months.

(1) The licensee shall notify the Board in writing within ten (10) days of the graduate's hire/employment date and provide the

name of each recent graduate, the name of the chiropractic college and date of graduation, a copy of the graduate's diploma, and the name and license number of the licensee supervising the graduate.

(2) The supervising chiropractor shall notify the Board within ten (10) days of the graduate's status as contained within this section.

(e) In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(f) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(g) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(h) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(i) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(j) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(k) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

§77.6. Default on Student Loans and Scholarship Agreements.

(a) Besides non-renewal of a license under §75.2 of this title (relating to Renewal of Chiropractic License) or §73.3 of this title (relating to Annual Renewal of Facility Registration) of this title, a licensee who has defaulted on a student loan or breached a student loan repayment contract, a scholarship contract by failing to perform his or her service obligation under the contract, or any other agreement between the licensee and the administering entity, relating to payment of a student loan or performance of obligations under a scholarship, may be subject to disciplinary action by the board as authorized by Chapter 56 of the Occupations Code. This section applies to chiropractic licensees and facility licensees who operate as a sole proprietor or partnership.

(b) The board may rescind any disciplinary action taken under this section upon receipt of information from an administering entity that the licensee is now in good standing, as provided in §72.3(b) of this title (relating to Qualification of Applicants).

(c) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship, the board may reinstate the original disciplinary action, if rescinded, or take other disciplinary action.

(d) The maximum sanction for a violation of this section is revocation and/or $1000 administrative penalty per violation. This sanction is incorporated into the board's maximum sanction table provided in §78.10(b) of this title (relating to Schedule of Sanctions) by this reference.

§77.7. Request for Information and Records from Licensees.

(a) Request for chiropractic records. Upon request, a licensee shall furnish copies of chiropractic records or a summary or narrative of the records pursuant to a written consent for the release of the information or records. The requested information or record shall not be released if the licensee determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The licensee may delete from the requested records confidential information about another person who has not consented to release. For purposes of this chapter, "chiropractic records" means any records pertaining to the history, diagnosis, treatment or prognosis of the patient including records of other health care practitioners contained in the records of the licensee to whom a request for release of records has been made. "Patient" means any person who consults or is seen by a licensee for the purposes of receiving chiropractic care.

(b) Written consent.

(1) The written consent required by subsection (a) of this section shall be signed by:

(A) the patient;

(B) the patients' personal representative if the patient is deceased;

(C) a parent or legal guardian if the patient is a minor;

(D) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or

(E) an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written consent shall contain the specific information or chiropractic records to be released under the consent; the reasons or purposes for the release; and the person to whom the information is to be released.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release information was obtained.

(c) Reasonable time. A copy of chiropractic records or a summary or narrative of the records requested under subsection (a) of this section shall be furnished by the licensee within a reasonable time, not to exceed 15 business days from the date of the request.

(d) Denial of request. If the licensee denies the request under subsection (a) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the licensee shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (a) of this section may not be withheld based on a past due account for care or treatment previously rendered to the patient or based on the lack of a letter of protection or other similar document.

(e) Fee for records. The licensee may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

(1) The fee shall be paid by the patient or someone else on the patient's behalf.

(2) A licensee may require payment in advance except from another licensee or other health care provider, including a chiropractor licensed by any other state, territory, or insular possession of the United States or any state or province of Canada, if requested for purposes of emergency or acute medical care.

(3) In the event payment is not received, within ten calendar days from notification of the charge, the licensee shall notify the requesting party in writing of the need for payment.

(4) A reasonable fee for a paper copy shall be a charge not to exceed:

(A) $30 for retrieval of records and processing the request, including copies for the first 10 pages;

(B) $1.00 per page for pages 11-60;

(C) $.50 per page for pages 61-400; and

(D) $.25 per page for pages over 400.

(5) A reasonable fee for copies of films or other static diagnostic imaging studies shall be a charge not to exceed $45 for retrieval and processing, including copies for the first 10 pages, and $1.00 for each additional page over 10.

(6) Reasonable fees may also include actual costs for mailing, shipping or delivery.

(7) A reasonable fee for completing and signing an affidavit or questionnaire certifying that the information provided is a true and current copy of the records may not exceed $15.

(8) In addition to the fee contemplated in paragraph (7) of this subsection, reasonable fees may also include the actual costs paid by the licensee to a notary for notarizing an affidavit, questionnaire, or other document.

(f) Subpoena not required. A subpoena shall not be required for the release of chiropractic records requested pursuant to subsection (a) of this section.

§77.8. Records and Documentation.

(a) An adequate chiropractic record, as described in this section, for each patient shall be maintained for a minimum of six years from the date of last treatment.

(b) If a patient was younger than 18 years of age when last treated by a licensee, the chiropractic records of the patient shall be maintained until the patient reaches age 21 or for six years from the date of last treatment, whichever is longer.

(c) Chiropractic records that relate to any civil, criminal or administrative proceeding shall not be destroyed until the proceeding has been finally resolved.

(d) Chiropractic records shall be maintained for such longer length of time than that imposed by this section when mandated by other federal or state statute or regulation.

(e) Each licensee practicing at a facility and each facility is equally responsible for compliance with this section.

(f) Licensees shall maintain patient and billing records in a manner consistent with the protection and welfare of the patient. A licensee's patient records shall support all diagnoses, treatments, and billing. Records shall be timely, dated, accurate, legible, and signed or initialed by the licensee or the person providing treatment. Electronic signatures are acceptable.

(g) Licensees are required to perform an appropriate history and exam based on the nature of the presenting problem described by the patient and in accordance with accepted documentation guidelines. Accepted guidelines include, but are not limited to, the latest edition of the American Chiropractic Association Clinical Documentation Manual, American Medical Association CPT Code Book, 1997 DG and/or Chiropractic Service Manual Guidelines set forth by CMS.

(h) All patient records for an initial visit shall include:

(1) Patient History;

(2) Description of symptomatology or wellness care;

(3) Examination findings, including imaging and laboratory records when clinically indicated;

(4) Diagnosis;

(5) Prognosis;

(6) Assessment(s);

(7) Treatment Plan;

(8) Treatment provided or recommended; and

(9) Periodic reassessment(s) when appropriate, with a minimum of once per calendar year.

(i) Each patient visit after the initial visit is considered a subsequent visit unless there is a new illness or injury. The following information must be reported in each patient's file on each subsequent visit:

(1) Updated History:

(A) Review of the chief complaint(s);

(B) Changes, if any, since the last visit;

(2) Physical Exam:

(A) Examination of the area involved in the diagnosis;

(B) Assessment of any change in the patient's condition since last visit;

(3) Treatment:

(A) Documentation of treatment given;

(B) Documentation of patient's response to the treatment rendered on that visit;

(C) Change in treatment plan or planned referrals if indicated.

(j) All licensed chiropractors shall observe and comply with all documentation laws pertaining to health care providers under state and federal law. Nothing within this section should be construed to constrain or limit the obligation of chiropractors to meet duly authorized law, rules and regulations.

§77.9. Out-of-Facility Practice.

(a) A licensed chiropractor who provides chiropractic services in a location other than a registered chiropractic facility (out-of-facility services) shall provide the board with a list that contains the following information, for each location:

(1) its name;

(2) its address and telephone number;

(3) the name of the owner or manager; and

(4) the planned or actual number of visits per week.

(b) At each location, the licensee must display, in the treating room, proof of licensure, such as a copy of his or her chiropractic license or the board-issued wallet size license, the name, facility number, address, and telephone number of the registered facility the licensee either owns or is employed at, and the consumer information required to be displayed under §78.7 of this title (relating to Public Interest Information). In lieu of displaying such information, the licensee may provide to each patient an information sheet that includes the information required by this subsection.

(c) A licensee must either be the registered owner of or be employed at a registered chiropractic facility in order to provide out-of-facility services. All out-of-facility services must be provided in conjunction with a registered facility.

(d) This section does not apply to a licensee who treats a patient at the patient's home, because the patient is physically unable to travel to the chiropractic facility.

(e) A licensee shall file the list required by subsection (a) of this section, no later than the 10th day after the date that out-of-facility services were first performed, and annually, thereafter, along with the licensee's annual license renewal.

(f) A licensed chiropractor that performs services as a designated doctor under Texas Labor Code, Title 5, is exempted from compliance with this section where acting as a designated doctor. This exemption does not preclude compliance or remove any duties under the Texas Labor Code or the rules promulgated by the Texas Department of Insurance, Division of Workers' Compensation.

§77.10. Rules to Prevent Fraud.

(a) Fraud and Abuse Policy. Health care fraud is everyone's concern. It exists, in some degree, in every health care profession and in every area of the United States. The Board takes a strong position against any form of healthcare fraud. Health care fraud can be defined as wantonly misleading or misrepresenting patient treatment circumstances or any other dynamic of the healthcare industry, resulting in any type of financial gain for the doctor, patient, or any other third party or entity. The Board opposes any type of fraud within the chiropractic profession, including insurers who use unfair medical review practices that create obstacles to chiropractic access and reasonable and necessary care for patient constitutes fraud and abuse. In particular, fraud in the practice of chiropractic should be prevented when filing workers' compensation and insurance claims.

(b) Fraud Definition. Fraud is defined as an intentional misrepresentation where the following conditions are present:

(1) there must be a cause of deception;

(2) the act or acts must show an intentional misrepresentation of fact; and

(3) the provider must stand to gain financially from the deception and misrepresentation.

(c) Incorporation by Reference. As part of its policy for the prevention of fraud, the Board incorporates by reference into this section the following rules under this title: §72.2, relating to Application for License; §75.5, relating to Continuing Education; §78.1, relating to Unprofessional Conduct; §78.2, relating to Proper Diligence and Efficient Practice of Chiropractic; §77.2, relating to Publicity; and §77.8, relating to Records and Documentation.

§77.11. Code of Ethics.

(a) Licensees shall employ their best good faith efforts to provide information and facilitate understanding to enable the patient to make an informed choice with regard to proposed chiropractic treatment. Licensees shall allow the patient to make his or her own determination on such treatment.

(b) Licensees should willingly seek consultation with other health care professionals when such consultation would benefit their patients and when such consultation is considered appropriate.

(c) Licensees shall not discriminate as to which patients they choose to serve on the basis of race, religion, ethnicity, nationality, creed, gender, handicap or sexual preference.

(d) Licensees shall conduct themselves as members of a learned profession and as members of the greater healthcare community dedicated to the promotion of health, the prevention of illness and the alleviation of suffering. As such, licensees should collaborate and cooperate with other health care professionals to protect and enhance the health of the public with the goals of reducing morbidity, increasing functional capacity, increasing the longevity of the U.S. population and reducing health care costs.

(e) Licensees shall recognize their obligation to help others acquire knowledge and skill in the practice of the profession. They shall

maintain the highest standards of scholarship, education and training in the accurate and full dissemination of information and ideas.

§77.12. Prepaid Treatment Plans.

(a) A licensee may accept prepayment for services planned but not yet delivered, but must provide the following:

(1) The plan must be cancellable by either party at any time for any reason without penalty of any kind to the patient.

(2) Upon cancellation of the plan the patient shall receive a complete refund of all fees paid on a pro rata basis of the number of treatments provided compared to total treatments contracted.

(3) The plan must provide for a limited, defined number of visits.

(4) The patient's file must contain the proposed treatment plan, including enumeration of all aspects of evaluation, management, and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

(A) The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that either the patient or the doctor discharge the other's services or therapeutic association.

(B) The treatment plan in such cases where prepayment is contracted must contain beginning and ending dates and a breakdown of the proposed treatment frequency.

(5) A contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated.

(6) If nutritional products or other hard goods including braces, supports, or patient aids are to be used during the proposed treatment plan, the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service or fee.

(b) This rule does not create any exemptions from any requirements applicable under the Texas Insurance Code.

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

Filed with the Office of the Secretary of State on September 9, 2014.

TRD-201404343
Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

CHAPTER 78. RULES OF PRACTICE

22 TAC §§78.1 - 78.17

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 78, §§78.1 - 78.17, concerning Rules of Practice.

The new rules in Chapter 77 will implement the retitling and reorganization of the Board rules in current Chapters 77 and 80 to provide concise and clear guidance to the public and licensees. This new chapter was proposed after a comprehensive stakeholder input request that occurred from December 1, 2013, to March 31, 2014. Comments were received concerning rules under former Chapter 75.

A licensee suggested a modification to current rule §75.1, concerning Grossly Unprofessional Conduct. The licensee commented that grossly unprofessional conduct is "unclear whether the reference is to 'the entirety of unprofessional conduct' which it does not *seem* to be; or to 'glaring, flagrant, monstrous' unprofessional conduct which it does not, in some instances *seem* to be." The commenter adds that this should be also be referenced in current rule §75.2(b). The Board responds that title of grossly unprofessional conduct is derived from the statutory language contained under the Texas Occupations Code §201.502(a)(7). As the statutory language is the basis for all Board authority to promulgate rules, the reference to grossly unprofessional conduct is not made for show but to conform to statutory authority, and thus, it should remain. Hence, the rule has been proposed for promulgation as rule §78.1, concerning Grossly Unprofessional Conduct, and maintaining identical language to the current rule §75.1.

Additionally, the licensee comments that the mandatory language of "shall" should be substituted for "can" for current rule §75.6, concerning Duty to Respond to Complaint. The reasoning is that "shall" makes it mandatory that every failure to timely respond to a complaint generates another complaint in a licensee's file and that it shall permit extenuating circumstances to be taken in account. The Board does not share these concerns. First, "shall" indicates a strong assertion or intention. In the legal context, it does create a directive that is unalterable. Further, the Board, through its executive director and the Enforcement Committee, are authorized and do exercise discretion when considering whether an enforcement action should be brought to fruition. Finally, there is no penalty or mark upon a licensee's record for mere complaints. Thus, the language is presently sufficient to accomplish and protect against the licensee's concerns and should not be modified. The rule is proposed as rule §78.5 in its current form.

The Texas Academy of Nutrition and Dietetics renewed its objection to current rule §75.17, concerning Scope of Practice. Specifically, they reiterate the importance of a modification to subsection (e)(2)(G) which currently authorizes chiropractors to address diet and weight control when providing therapeutic patient care. It is alleged that the rule as written is "overly-broad and lacks the specificity needed to ensure Texans are receiving the appropriate types of nutrition services from those best qualified to provide those services." The Board understands the concerns yet maintains its position that the rule is not meant to provide chiropractors with an expanded scope of practice into that for registered and licensed dieticians. The rule merely acknowledges that chiropractors may share general, non-medical nutrition-related information and does not provide that a chiropractor can provide medical nutrition therapy. Accordingly, the rule has been proposed for promulgation as rule §78.15, Scope of Practice, herein and maintaining identical language to the current rule §75.17.

The Board through its Rules Committee held a discussion and recommended a modification to current rule §75.3 because the rule failed to contemplate the reporting of deferred adjudication. The Board should be cognizant of the instances that an individual while not formally convicted might pose a potential risk to the health and safety of the public. The Board added clarifying lan-

guage to proposed rule §78.3 to assist in risk management and to enable proactive assistance for a licensee where appropriate.

Further, the Board through its Rules Committee held a discussion and recommended a modification to current rule §75.6(c) because the rule did not clearly indicate that a response to Board inquiry required the response to include any request for information. The Board seeks to promulgate a modification to this rule to provide for more efficient disposition of enforcement matters and the discussion noted that the deadlines have been routinely relaxed upon request of a respondent. The Board modified the language of proposed rule §78.5 to more efficiently dispose of these matters.

The Board through its Rules Committee held a discussion and recommended a modification to current rule §75.8 because the rule was not clear in describing the requirements for compliance with the posting of public interest information. The clarifying language is proposed to provide adequate notices of a licensed and registered practice that protects the health and safety of the public. The Board added additional clarifying language to proposed rule §78.7 to assist in this endeavor.

The Board through its Rules Committee held a discussion and recommended a modification to current rule §75.9 because it did not comport with the requirements of the statutory provisions under §201.507 of the Chiropractic Act. It particularly identified a requirement for a merits hearing to occur on the 60th day following a temporary suspension that was not contained within the statutory language. The Board modified the language in proposed rule §78.8 to accurately track the statutory requirements.

Additionally, the Board sought to clarify current rule §75.13 to more closely track the statutory language. Specifically, the language modifications are suggested to capture all aspects of disciplinary records and reportable actions. The Board modified the language in proposed rule §78.11 to this end.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§78.1 Grossly Unprofessional Conduct.

(a) Grossly unprofessional conduct when applied to a licensee or chiropractic, facility includes, but is not limited to the following:

(1) maintaining unsanitary or unsafe equipment;

(2) failing to use the word "chiropractic", "chiropractor," "Doctor, D.C.," or "Doctor of Chiropractic, D.C." in all advertising medium, including signs and letterheads;

(3) engaging in sexual misconduct with a patient within the chiropractic/patient relationship;

(4) exploiting patients through the fraudulent use of chiropractic services which result or are intended to result in financial gain for a licensee or a third party. The rendering of chiropractic services becomes fraudulent when the services rendered or goods or appliances sold by a chiropractor to a patient are clearly excessive to the justified needs of the patient as determined by accepted standards of the chiropractic profession;

(5) submitting a claim for chiropractic services, goods or appliances to a patient or a third-party payer which contains charges for services not actually rendered or goods or appliances not actually sold;

(6) failing to disclose, upon request by a patient or his or her duly authorized representative, the full amount charged for any service rendered or goods supplied.

(b) Sexual misconduct as used in subsection (a)(3) of this section means:

(1) sexual impropriety, which may include:

(A) any behavior, gestures, statements, or expressions which may reasonably be interpreted as inappropriately seductive, sexually suggestive or sexually demeaning;

(B) inappropriate sexual comments about and to a patient or former patient including sexual comments about an individual's body or sexual comments which demonstrate a lack of respect for the patient's privacy;

(C) requesting unnecessary details of sexual history or sexual likes and dislikes from a patient;

(D) making a request to date a patient;

(E) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(F) kissing or fondling of a sexual nature; or

(G) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature; or

(2) sexual intimacy, which may include engaging in any conduct by a person or between persons that is intended to cause, is likely to cause, or may be reasonably interpreted to cause to either person stimulation of a sexual nature, such as:

(A) sexual intercourse;

(B) genital contact;

(C) oral to genital contact;

(D) genital to anal contact;

(E) oral to anal contact;

(F) oral to oral contact;

(G) touching breasts;

(H) touching genitals;

(I) encouraging another to masturbate in the presence of the licensee;

(J) masturbation by the licensee when another is present; or

(K) any bodily exposure of normally covered body parts.

(c) It is a defense to a disciplinary action under subsection (a)(3) of this section if the patient was no longer emotionally dependent on the licensee when the sexual impropriety or intimacy began, and the licensee terminated his or her professional relationship with the person more than six months before the date the sexual impropriety or intimacy occurred.

(d) It is not a defense under subsection (a)(3) of this section if the sexual impropriety or intimacy with the patient occurred:

(1) with the consent of the patient;

(2) outside professional treatment sessions; or

(3) off the premises regularly used by the licensee for the professional treatment of patients.

(e) Licensees must respect a patient's dignity at all times and should provide appropriate gowns and/or draping and private facilities for dressing and undressing.

§78.2. Proper Diligence and Efficient Practice of Chiropractic.

(a) A lack of proper diligence in the practice of chiropractic or the gross inefficient practice of chiropractic when applied to a licensee or chiropractic facility includes but is not limited to the following:

(1) failing to conform to the generally accepted standards of care within the chiropractic profession in Texas, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) failing to assess and evaluate a patient's status;

(B) performing or attempting to perform procedures in which the chiropractor is untrained by education or experience;

(C) delegating chiropractic functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question;

(D) causing, permitting, or allowing physical injury to a patient or impairment of the dignity or the safety of a patient;

(E) abandoning patients without reasonable cause and without giving a patient adequate notice and the opportunity to obtain the services of another chiropractor and without providing for the orderly transfer of a patient's records;

(F) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient may suffer from a condition:

(i) that requires a diagnosis outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §78.13 of this title (relating to Scope of Practice); or

(ii) that requires treatment outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §78.13 of this title; or

(G) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have reasonably determined that the patient suffers from a condition that is within the chiropractic scope of practice, but requires a diagnosis or treatment that exceeds the licensee's education, training or experience.

(2) failing to provide direct supervision of students or other persons as required by §77.5 of this title (relating to Delegation of Authority) or §74.2 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(b) Conduct enumerated in subsection (a) of this section may also constitute, under appropriate circumstances, violations of other provisions of the Chiropractic Act or other board rules, including but not limited to those which prohibit grossly unprofessional conduct or dishonorable conduct.

§78.3. Individuals With Criminal Backgrounds.

(a) This section establishes guidelines and criteria on the eligibility of persons with criminal backgrounds, including each person who owns a 10% or more interest in a chiropractic facility, to obtain licenses or registrations as chiropractors, chiropractic radiologic technologists (CRTs) or chiropractic facilities.

(b) The board may suspend or revoke a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of a licensed chiropractor, registered CRT, or registered facility. This subsection applies to persons who are not imprisoned at the time the board considers the conviction.

(c) The board shall revoke a license or registration on the license or registration holder's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision. A person in prison is not eligible for a license or registration.

(d) In considering whether a criminal conviction directly relates to the occupation of chiropractic, chiropractic radiology, or facility operation, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in chiropractic, chiropractic radiology, or facility operation;

(3) the extent to which a license or registration might afford an opportunity to repeat the criminal activity in which the person had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or licensed facility.

(e) In reaching a decision required by this section, the board shall also determine the person's fitness to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or registered facility. In making this determination, the board shall consider the following factors listed in paragraphs (1) - (6) of this subsection:

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

(2) the age of the person at the time of the commission of the crime;

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

(4) the conduct and work activity of the person prior to and following the criminal activity;

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

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(f) An applicant for a license or registration from the board including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant, including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier. The applicant for a license or registration or current licensee or facility owner shall provide certified copies of the indictment or information and the judgment of the court with this notification.

(g) Upon notification of a conviction or deferred adjudication, the board shall provide a copy of this section to the person and request that the person respond to the board as to why the board should not deny the application or take disciplinary action against the person, if already licensed or registered.

(h) A person with a conviction or deferred adjudication shall provide the response in writing to the board within 15 days after receipt of the notice of a conviction and may submit any information that he or she believes is relevant to the determinations required by this section. If the person fails to respond, the matter will be referred to the Enforcement Committee or the Licensure/Educational Standards Committee as provided in subsection (i) of this section. The person shall also:

(1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (e)(6) of this section;

(2) cooperate with the board by providing the information required by subsection (e) of this section, including proof, in the form indicated in subparagraphs (A) - (D) of this paragraph, that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment, and a letter from the spouse or other parent;

(C) maintained a record of good conduct as evidenced by letters of recommendation, absence of other criminal activity or documentation of community service since conviction; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid.

(i) Determinations under this section will be considered enforcement matters and made in accordance with this chapter, except that the executive director will review the application for licensure or registration of a person with a criminal conviction and refer it to the Licensure/Educational Standards Committee (LESC), upon receipt of all information required by this section. The LESC shall determine whether the applicant may sit for examination or be granted a certificate of registration or license. Upon a recommendation to deny an application by the LESC, the matter will be referred to the Executive Director for informal settlement or, if necessary, a hearing as provided by §78.8(d) of this title (relating to Complaint Procedures).

(j) The board shall notify the affected person in its order that denies, suspends, or revokes a license or registration under this section, or otherwise in writing, after hearing, of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Occupations Code, §53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

(k) The Chiropractic Act, Occupations Code §201.302, requires that an applicant for licensure be of good moral character. Section 201.502 further authorizes the board to revoke or impose other sanctions for violations of certain specified conduct, including deception and fraud in the practice of chiropractic, conviction of a felony or a misdemeanor of moral turpitude, grossly unprofessional conduct, habitual conduct that is harmful to patients, and lack of diligence in the chiropractic profession. Chiropractors and the healthcare profession generally are held to high standards of professional conduct. To protect the public and patients, the board has a duty to ensure that licensees and registrants are persons who possess integrity, honesty and a high standard of conduct as well as the skill, education, and training to perform their duties and responsibilities. The crimes listed in paragraphs (1) - (6) of this subsection relate to the license and registrations issued by the board. These crimes generally indicate an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. The direct relationship to a board issued license or registration is obvious when the crime occurs in connection with the practice of chiropractic.

(1) practicing chiropractic without a license and other violations of the Chiropractic Act;

(2) deceptive business practices;

(3) medicare or medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud, including under the Penal Code §32.55;

(Q) solicitation under the Penal Code §38.12(d) or Occupations Code, Chapter 102; or

(R) mail fraud;

(5) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant or to be unfit for licensure or registration if action by the board will promote the intent of the Chiropractic Act, board rules including this chapter, and Occupations Code, Chapter 53.

§78.4. Undercover Investigations.

(a) Undercover investigations will be conducted only when other investigative techniques have failed or are not efficient or appropriate. Undercover investigations shall NOT be used indiscriminately.

(b) If the board investigator determines an undercover investigation is needed on a specific complaint, the investigator shall submit, to the Enforcement Committee chair and the executive director of the board, a written recommendation for an undercover investigation that will contain:

(1) the specific complaint addressed;

(2) the information which the investigator has determined that an undercover investigation may reveal;

(3) the investigator's opinion regarding the relevance of the information listed in paragraphs (1) and (2) of this subsection;

(4) the investigator's opinion regarding the reasons all previous attempts to gather the information in paragraphs (1) - (3) of this subsection by alternate techniques have not been successful or alternative techniques are not appropriate or efficient;

(5) the undercover investigative acts that will be performed and by whom.

(c) The Enforcement Committee chair and executive director will evaluate the need and appropriateness of the recommendation and, if possible, will consult with the Enforcement Committee prior to a decision to authorize an undercover investigation.

(d) The Enforcement Committee chair and executive director will assume direct responsibility for an investigation while undercover activities are being conducted.

§78.5. Duty to Respond to Complaint and Request for Information or Records.

(a) An individual or facility regulated by the board shall cooperate with the board in its investigation of a complaint filed against the individual or facility. Upon receipt of a notice of a complaint or request for information or records from the board, an individual or facility shall respond to the complaint and any request by the board for information or records concerning the complaint. A notice of a complaint will be sent "Certified Return Receipt Requested" and must be accepted by the individual or facility or their designee. A duplicate copy of the complaint will be sent by the United States mail, and so doing raises a presumption of delivery. The original notice and the copy will be sent to the respondent's current business or mailing address on file with the board, which the respondent is required to maintain with the board by §75.1 of this title (relating to Notification and Change of Business Address), §73.1 of this title (relating to Chiropractic Facilities), or §74.2 of this title (relating to Registration of CRTs). For the purposes of this chapter and Chapter 79 of this title (relating to SOAH Proceedings), the last known address of a respondent is presumed to be the current business or mailing address on file with the board.

(b) The response to the complaint and to any request by the Board for information or records shall be in writing, sent no later than the 15th day after receipt of the notice from the board, and shall be directed to the attention of the board's Enforcement Committee.

(c) Failure to timely respond to a complaint and any request by the Board for information or records shall be an independent ground for disciplinary action by the board.

§78.6. Required Fees and Charges.

(a) Current fees required by the board are as follows:
Figure: 22 TAC §78.6(a)

(b) The board is required to increase its fees for annual renewal, an examination, and re-examination by $200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "Professional Fee (78th Leg)." The total amount of each of these fees must be paid before the board will process an application subject to such fee.

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC Part 3, Chapter 70, §§70.1 - 70.10 (relating to Cost of Copies of Public Information).

(1) List of New Licensees

(2) Lists of Licensees

(3) Licensee Labels

(4) Demographic Profile

(5) Facilities List

(6) Facilities Labels

§78.7. Public Interest Information.

(a) In order for the public to have access to the board and the board's procedures by which complaints are filed with and resolved by the board, each chiropractic facility is required to display a placard or sign furnished by the board containing the name of the board, mailing address, and telephone number for the purpose of directing complaints to the board. Each licensee practicing at a facility and each owner required to be registered with the board are equally responsible for ensuring that the public information placard and current annual registration certification are posted compliance with this section.

(b) The placard or sign shall be conspicuously and prominently displayed in a place in the facility in public view, such as the public reception area.

(c) Each licensee and registrant shall display their original current annual registration, in a prominent and conspicuous place in each facility in which the individual practices, in public view, such as the public reception area. Each chiropractic facility shall display its original current annual registration in a conspicuous and prominent place in the facility, in public view, such as the public reception area. Any reproduction of a facility registration displayed in lieu of the original is not permitted. A licensee or CRT may display a copy of his or her annual registration if he or she works in more than one facility; however, the original registration must be displayed in the facility in which the licensee or CRT provides the majority of his or her services.

§78.8. Complaint Procedures.

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:
Figure: 22 TAC §78.8(a)

(1) complainant's name, address and phone number;

(2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;

(3) date, time and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) The board shall prioritize complaints for purposes determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(A) The board shall create and maintain a written list of the categories of complaints in order from the most serious to least serious violations of the Texas Chiropractic Act or administrative rules. The list shall also cite the specific rules and statutes that may have been violated, and the fines or other penalties that may be assessed.

(B) The board shall have this list available at the board office and on the board website for interested parties.

(C) The board shall use this list to set priorities for the investigation of complaints against licensees with the most serious complaints being of the highest priority.

(3) All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(4) The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Schedule of Sanctions, respectively). The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the SOAH for formal hearing. The Enforcement Commit-

tee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §79.2 of this title (relating to Commencement of Enforcement Proceedings).

(e) Recission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the State of Texas if the committee or the board determines from the preponderance of the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare. The purpose of a temporary suspension is to protect the public until a preliminary hearing can be held.

(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension.

(A) The purpose of the 14-day hearing is to provide the licensee with notice and an opportunity to review the Board's evidence or information, to present evidence, raise defenses, and to be heard.

(B) At the 14-day hearing, the only issue presented is whether the temporary suspension should be dissolved or kept in place. If the administrative law judge finds that the Board has competent evidence or information that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare, then the administrative law judge may issue an order keeping the temporary suspension in place pending the initiation of other disciplinary proceedings against the licensee.

(C) If a temporary suspension is ordered, the Board shall initiate other disciplinary proceedings within 120 days of the date of the order of temporary suspension. If criminal action is pending against the licensee, a final hearing on such disciplinary proceedings may be deferred until such time as the criminal action is finally adjudicated.

(2) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. This 60-day hearing shall determine whether the suspension shall remain in effect pending the initiation, prosecution, and final determination of other disciplinary proceedings against the licensee. If the 60-day hearing is not held in the time required, the license is reinstated without further action of the board or committee.

(3) A hearing held under this subsection shall be conducted by the SOAH.

(4) The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail to the address on file with the Board and by facsimile and/or email if such numbers or addresses are known to the Board. The notice sent by certified mail is legal notice under this section.

(5) The suspension shall remain in effect pending further action by the board unless an administrative law judge, the committee, or the board orders the suspension rescinded after hearing.

(6) The licensee shall not practice chiropractic during the duration of the suspension.

(7) During the suspension the enforcement and investigatory processes will continue.

(8) The licensee may waive either the 14-day or 60-day hearing or may agree that such hearings can be held beyond the statutory deadlines. The temporary suspension shall remain in effect until a hearing is held or is otherwise dissolved.

§78.9. Disciplinary Guidelines.

(a) Purpose. The purpose of these guidelines is to:

(1) provide guidance and a framework of analysis for board staff, the enforcement committee and the administrative law judges to promote consistency in the making of recommendations on sanctions to the board in disciplinary cases;

(2) promote consistency in the exercise of sound discretion by the board in the imposition of sanctions in disciplinary cases; and

(3) provide guidance for the enforcement committee and other members of the board for the informal resolution of potentially contested matters.

(b) Limitations. This section shall be construed and applied so as to preserve the board's discretion in the imposition of sanctions and remedial measures pursuant to the Chiropractic Act, Occupations Code, Chapter 201. This section shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Board action. The board may take disciplinary action against a licensee who is found in violation of the Chiropractic Act, another state law for which disciplinary action may be taken or a rule

or order of the board. A disciplinary action may be composed of any one or a combination of the following sanctions:

(1) revocation of license;

(2) suspension of license for a definite period of time;

(3) suspension with probation for a definite period of time;

(4) formal reprimand;

(5) administrative penalty;

(6) additional continuing education.

(d) Practicing without a license. A person, not a licensee, who is found to be practicing without a license in violation of the Chiropractic Act, Occupations Code, Chapter 201, shall be assessed an administrative penalty as provided by §78.10 of this title (relating to Schedule of Sanctions).

(e) Additional conditions. The Board may impose, as a condition of probation or as a term of a sanction, additional conditions or restrictions upon the license of the licensee that the Board deems necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:

(1) completion of a specified number of continuing education hours on specified topics approved in advance by the board in addition to the minimum number required of all licensees as a condition of renewal;

(2) taking and passing with the minimum required score of an examination required by the board;

(3) restrictions on the type of treatment, treatment procedures, and/or class of patients to be treated;

(4) restrictions on the licensee's supervision of others in the practice of chiropractic;

(5) undergoing a psychological and/or medical evaluation by a qualified professional approved in advance by the board and undergoing any treatment recommended pursuant to the evaluation;

(6) regular reporting to the board as a means of monitoring the licensee's compliance with a board order.

(f) Down-time. A licensee whose license has been suspended shall not during the period of suspension realize any remuneration from his or her chiropractic practice; be in attendance in his or her office when it is open to serve patients; or provide chiropractic services to any person at any location. The licensee may arrange with another licensee to provide care and treatment to patients during the period of down-time so long as the suspended licensee does not receive any form of payment for chiropractic services rendered, including fee sharing with the treating licensee.

(g) Aggravation. The following may be considered as aggravating factors so as to merit more severe or restrictive sanction by the board:

(1) seriousness of the violation, including the nature, circumstances, extent, or gravity of the prohibited conduct and the harm or potential harm to a patient;

(2) economic harm to any individual or entity, to property or the environment;

(3) hazard or potential hazard created to the health, safety, or economic welfare of the public;

(4) attempted concealment of misconduct;

(5) premeditated conduct;

(6) intentional misconduct;

(7) disciplinary history, including prior violations of a similar or related nature;

(8) likelihood of future misconduct of a similar nature;

(9) failure to implement remedial measures to correct or alleviate harm arising from the misconduct;

(10) lack of rehabilitative potential;

(11) motive;

(12) the type of sanction, including the amount of any administrative penalty, necessary to deter future violations; and

(13) any relevant circumstances or facts increasing the seriousness of the misconduct.

(h) Extenuation and mitigation. The absence of the circumstances listed as subsection (g)(1) - (13) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions by the board:

(1) self-reported and voluntary admissions of misconduct;

(2) implementation of remedial measures to correct or mitigate harm arising from the misconduct;

(3) motive;

(4) rehabilitative potential;

(5) relevant facts and circumstances reducing the seriousness of the misconduct;

(6) relevant facts and circumstances lessening responsibility for the misconduct.

(i) The board shall consider the factors listed in subsections (g) and (h) of this section in determining the amount of an administrative penalty under §78.10 of this title (relating to Schedule of Sanctions).

(j) Upon a finding that a violation of the Act, another state law, or a rule or order of the board has occurred and that disciplinary action is warranted, the enforcement committee shall determine and recommend the type and amount of sanction in accordance with this section and §78.10 of this title.

(k) All disciplinary actions issued by the board will take the form of a board order. All disciplinary actions shall be recorded and made available upon request as public information. All disciplinary actions shall be published in the TBCE newsletter, may be released in a press release, and shall be transmitted to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.

§78.10. Schedule of Sanctions.

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

(1) APA--Administrative Procedure Act, Government Code, Chapter 2001.

(2) Board--Texas Board of Chiropractic Examiners.

(3) Chiropractic Act or CA--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b).

(4) HPCA--Health Professions Council Act, Occupations Code, Chapter 101.

(5) HRC--Human Resources Code.

(6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas.

(7) MRTCA--Medical Radiologic Technologist Certification Act, Occupations Code, Chapter 601.

(8) Occ. Code--Occupations Code.

(9) Respondent--An individual or facility regulated by the board against whom a complaint has been filed.

(10) SOAH--State Office of Administrative Hearings.

(11) DSHS--Department of State Health Services.

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table:
Figure: 22 TAC §78.10(b)

(c) In a case where a respondent has committed multiple violations or multiple occurrences of the same violation, board staff, the enforcement committee or an administrative law judge may recommend and the board may impose sanctions in excess of a maximum sanction specified in the maximum sanction table provided by subsection (b) of this section, if otherwise authorized by law. For the fourth and subsequent offenses of any violation listed in the maximum sanction table with three levels of sanctions, the maximum sanction is revocation and/or $1,000 administrative penalty.

(d) An administrative penalty may not exceed $1,000 per day for each violation. Each day a violation continues or occurs is a separate violation for the purposes of imposing an administrative penalty.

(e) For violation of a statute which is not listed in the maximum sanction table and for which the board is authorized to take disciplinary action, the maximum sanction is revocation and/or $1,000 administrative penalty.

§78.11. Disciplinary Records and Reportable Actions.

(a) Information concerning licensure status for all licensees of the board is entered in a license database. The entry in the license database for a licensee who has been disciplined will be annotated that a disciplinary action has occurred. In responding to licensure status requests, the board will report whether a licensee has been disciplined by the board.

(b) The board, upon written request from a licensee, will remove such annotations from the database and its other records if the discipline imposed falls into any category listed in paragraphs (1) - (6) of this subsection. Licensees having more than one disciplinary action do not qualify for removal of the annotations.

(1) Disciplinary action in which a written reprimand or administrative penalty was issued:

(A) the effective date of the board order is at least three years past;

(B) the licensee has had no subsequent disciplinary action;

(C) the licensee has no disciplinary proceeding pending;

(D) the licensee currently is not under investigation by the board; and

(E) the order did not involve action based upon either sexual misconduct, fraud, or conviction of a criminal act.

(2) Disciplinary action in which a "suspension, all probated" order was issued:

(A) the effective date of the board order is at least seven years past;

(B) the order did not involve action based upon either sexual misconduct, fraud or conviction of a criminal act;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee currently is not under investigation by the board.

(3) Disciplinary action in which an administrative penalty or written reprimand was imposed against a facility for operating a facility without a facility license or with an expired license:

(A) the effective date of the board order is at least one year past;

(B) the facility has had no subsequent disciplinary action for the same violation;

(C) the facility has no disciplinary proceeding pending; and

(D) the facility currently is not under investigation by the board.

(4) Disciplinary action in which an administrative penalty or written reprimand was imposed against a licensee for practicing with an expired license:

(A) the effective date of the board order is at least three years past;

(B) the licensee has had no subsequent disciplinary action for the same violation;

(C) the licensee has no disciplinary proceeding pending; and

(D) the licensee currently is not under investigation by the board.

(5) Disciplinary action in which a suspension order (partially or not probated) was issued:

(A) the effective date of the board order is at least ten years past;

(B) the order did not involve action based upon either sexual misconduct, fraud or conviction of a criminal act;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee currently is not under investigation by the board.

(6) Disciplinary action in which an administrative penalty and a written reprimand were imposed against a licensee:

(A) the effective date of the board order is at least five years past;

(B) the licensee has had no subsequent disciplinary action;

(C) the licensee has no disciplinary proceeding pending;

(D) the licensee currently is not under investigation by the board; and

(E) the order did not involve action based upon either sexual misconduct, fraud, or conviction of a criminal act.

(c) The enforcement committee shall review a request and may ask for additional information from the licensee to evaluate the request.

(d) Upon a determination by the enforcement committee that the licensee meets all requirements of this section, the committee shall recommend that the board either grant or deny the request. The committee shall provide its reasons to the board for the recommendation.

(e) Should the board grant the request, the annotation of disciplinary action for a licensee and other files relating to that disciplinary action will be removed from the board's records pursuant to the board's records retention schedule.

(f) The board will notify the licensee in writing of its decision within a reasonable period of time.

(g) The board may remove from its records after three years from the date of closure any complaint which did not result in disciplinary action by the board as provided by the board's records retention schedule.

(h) The removal of disciplinary records under this section is within the sole discretion of the board. Its decision is final and is not subject to judicial review.

§78.12. Peer Review Committee.

(a) When investigating a complaint, the Board may consider as a mitigating factor whether a licensee has cooperated with, or established, an effective local peer review process.

(b) A chiropractic peer review process is part of an outcome-based, continuous quality improvement process that involves:

(1) the setting and periodic re-evaluation of standards for quality by which a chiropractic operation will be evaluated;

(2) the collection of data necessary to identify when those standards are not being met and data necessary to evaluate the reason(s) the deficiency occurred;

(3) an objective review of the data by an appropriate peer review committee to make recommendations for quality improvement; and

(4) an appropriate feedback mechanism to ensure that the process is operating in a manner that continually improves the quality of care provided to patients.

(c) In appointing members to peer review committees, the Board shall ensure that each member meets the following requirements:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with the Texas Insurance Code, Article 21.58A.

(d) Each peer review committee member shall be appointed by the Board and shall serve for a term of three years. The Board may choose to reappoint peer review committee members.

(e) Peer review committee members shall fulfill the following duties:

(1) review standards of care and billing complaints;

(2) review records and evidence collected by agency staff as part of an investigation;

(3) report to the Board their findings regarding a complaint, including the applicable standard of care governing the chiropractic treatment of services provided by the chiropractor, whether the standard of care was met, and the clinical basis for the committee's finding;

(4) evaluate periodically how well peer review is working; and

(5) further cooperate with the Board and the enforcement committee in the investigation of complaints as required, including attending an informal conference or testifying at a contested case hearing.

(f) The Board shall appoint a six-member Executive Peer Review Committee to oversee and direct the activities of the local peer review committees. The Executive Peer Review Committee shall elect a presiding officer from its members.

(1) The Executive Peer Review Committee shall conduct hearings relating to disputes referred by a local peer review committee and shall make its recommendations based solely on evidence presented in the hearings.

(2) The Executive Peer Review Committee shall submit to the Board an annual report on the effectiveness of peer review and opportunities for improving peer review.

(g) The Board shall provide all peer review committee members with training in the investigation of complaints in accordance with the Chiropractic Act and the Board's rules.

§78.13. Scope of Practice.

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

(1) Board--The Texas Board of Chiropractic Examiners.

(2) CPT Codebook--The American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(3) Cosmetic treatment--A treatment that is primarily intended by the licensee to address the outward appearance of a patient.

(4) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(5) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(6) On-site--The presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(7) Practice of chiropractic--The description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(8) Subluxation--A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.

(9) Subluxation complex--A neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological re-

flections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(b) Aspects of Practice.

(1) A person practices chiropractic if they:

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(3) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

(c) Examination and Evaluation.

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing, other than an incisive procedure;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(B) Technological Instrumented Vestibular-Ocular-Nystagmus Testing may be performed by a licensee with a diplomate in chiropractic neurology and that has successfully completed 150 hours of clinical and didactic training in the technical and professional components of the procedures as part of coursework in vestibular rehabilitation including the successful completion of a written and performance examination for vestibular specialty or certification. The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified licensee.

(d) Analysis, Diagnosis, and Other Opinions.

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(e) Treatment Procedures and Services.

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) therapeutic lasers (non-invasive, nonincisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to appropriate health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

§78.14. Acupuncture.

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including, but not limited to, manipulation, heat, cold, pressure, vibration, ultrasound, light electrocurrent, and

short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation. All therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code §201.002.

(b) In order to practice acupuncture, a licensee shall either:

(1) successfully complete at least one-hundred (100) hours training in undergraduate or post-graduate classes in the use and administration of acupuncture provided by a bona fide reputable chiropractic school or by an acupuncture school approved by the Texas State Board of Acupuncture Examiners;

(2) successfully complete either:

(A) the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners; or

(B) the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine; or

(3) successfully complete at least one-hundred (100) hours training in the use and administration of acupuncture in a course of study approved by the board.

(c) Existing licensees that have been trained in acupuncture, that have been practicing acupuncture, and that are in good standing with the Texas Board of Chiropractic Examiners and other jurisdictions where they are licensed, may meet the requirements of subsection (b) of this section by counting each year of practice as ten hours of training in the use and administration of acupuncture.

(d) Beginning on January 1, 2010, an applicant for licensure must successfully complete either the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners or the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine in order to practice acupuncture. This requirement will supersede the provisions of subsection (b) of this section.

§78.15. Scope of Prohibitions.

(a) The practice of chiropractic does not include:

(1) incisive or surgical procedures;

(2) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(3) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(b) Aspects of Prohibition.

(1) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials;

(D) cosmetic treatments; or

(E) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(c) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

§78.16. Cease and Desist Orders.

The Board of Chiropractic Examiners delegates to its Enforcement Committee the authority to determine whether it appears that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under the Chiropractic Act. After notice and opportunity for an informal hearing, the Enforcement Committee may issue a cease and desist order in the name of the board prohibiting the person from engaging in that activity. The Enforcement Committee may take all actions necessary and proper to carry out the board's authority under Texas Occupations Code §201.6015, relating to cease and desist orders.

§78.17. Spinal Screenings.

(a) The purpose of this section is to set forth the minimal standards for conducting out-of-facility spinal screenings. A licensee may offer a spinal screening outside of a registered facility only if they are in compliance with this section.

(b) At all out-of-facility spinal screenings, a placard that complies with the following requirements must be prominently displayed:

(1) the placard must be placed in a location that can be readily viewed by the public;

(2) the placard must contain the name of the sponsoring clinic and the address of the clinic;

(3) the placard must be printed in bold Times New Roman font in at least 32-point font size; and

(4) the placard must include the following language: "This spinal screening is being offered free of charge and free of any commitment. The screening process does not diagnose a spinal deformity or condition. You are free to seek an opinion from the health care provider of your choice for a more thorough examination and treatment. Any complaints regarding the conduct at this spinal screening may be directed to the Texas Board of Chiropractic Examiners, www.tbce.state.tx.us, (512) 305-6707."

(c) A licensee and/or clinic sponsoring a spinal screening is responsible for ensuring compliance with §77.2 of this title (relating to Publicity).

(d) A licensee may allow or direct a student from an accredited chiropractic college who has credit for at least six trimesters of chiropractic education to conduct a spinal screening.

(e) A licensee may allow or direct any other person to conduct a spinal screening if a licensee has verified that the person is qualified and properly trained to conduct a spinal screening in compliance with §77.5 of this title (relating to Delegation of Authority). When a licensee or a student that meets the requirements of subsection (d) of this section is present, they may allow or direct another person to assist with a spinal screening.

(f) A licensee shall create and maintain, for at least six months following the event, a log for each screening event that contains, at a minimum, the following information:

(1) date and location of the event;

(2) name and license number of the sponsoring license;

(3) name and registration number of the chiropractic facility of the sponsoring licensee;

(4) names of all persons performing spinal screenings; and

(5) the names of each person screened at the event.

(g) School spinal screening must be conducted in compliance with rules and guidelines of the Texas Department of State Health Services.

(h) The provisions for out-of-facility spinal screenings in this section supersede the requirements of §77.9 of this title (relating to Out-of-Facility Practice).

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

Filed with the Office of the Secretary of State on September 9, 2014.

TRD-201404344
Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

CHAPTER 79. SOAH HEARINGS

22 TAC §§79.1 - 79.11

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 79, §§79.1 - 79.11, concerning SOAH Hearings.

The new rules in Chapter 79 will implement the retitling and reorganization of the Board rules in current Chapter 76 to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rules are in effect, enforcing or administering the rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Yarbrough has determined that for the first five-year period the new rules are in effect, the public benefit expected as a result of the proposed new rules will be to ensure the protection of public health and safety.

Ms. Yarbrough has also determined that the proposed new rules will not have an adverse economic effect on small businesses or individuals because the new rules do not impose any duties or obligations upon small businesses or individuals.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted by mail to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax: (512) 305-6705; or by email to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§79.1. Definitions.

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

(1) ALJ--Administrative law judge.

(2) APA--Administrative Procedure Act, Government Code, Chapter 2001.

(3) Chiropractic Act--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b).

(4) Board--The Texas Board of Chiropractic Examiners.

(5) Licensee--An individual who has been granted a license by the board to practice chiropractic in the State of Texas.

(6) SOAH--State Office of Administrative Hearings.

§79.2. Commencement of Enforcement Proceedings.

(a) Filing with SOAH. Board staff will file a Request to Docket Case Form, as required by SOAH rules, with the SOAH for an enforcement case referred for formal hearing under §78.8(c) of this title (relating to Rules of Practice).

(b) Notice. The respondent shall be entitled to reasonable notice of a hearing of not less than ten days prior to the hearing as provided by the APA, §2001.051. The notice shall contain a citation to 1 TAC Chapter 155 (relating to SOAH Rules of Procedure) and include the matters specifically required by §2001.052, as follows:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is being held;

(3) a reference to the particular sections of the Chiropractic Act, other law or rules which the respondent is alleged to have violated; and

(4) a short and plain statement of the acts relied on by the board as a violation of the cited law and rules.

(c) Service. The notice of hearing and the formal complaint by the board shall be served on the respondent, at the last known address of the respondent. Service on the respondent shall be complete and effective if service is by registered or certified mail and by regular mail, at the current business or mailing address of the respondent on file with board.

§79.3. Denial of Application.

A person whose application for licensure or registration has been denied may ask for a hearing by filing a petition with the executive director within 30 days of notice of the denial. If the petition is not received within 30 days of the date of notice of denial, the decision is final. The petition shall set out the legal basis and supporting facts for challenging the board's decision and the relief sought by the petitioner. Upon receipt of the petition, the executive director shall file the case with the SOAH and request a hearing.

§79.4. SOAH Hearings.

(a) Hearings shall be conducted in accordance with the APA, this chapter, and SOAH rules, 1 TAC Chapter 155, by an ALJ assigned by the SOAH. Jurisdiction over a case is acquired by the SOAH when the board staff files a Request to Docket Case Form as required by SOAH rules.

(b) In an enforcement case where the board has the burden of proof, the board, through its staff, is the petitioner and the individual or facility against whom a complaint has been filed is the respondent. In a licensure or other case where the board does not have the burden of proof, the applicant shall be the petitioner, and the board, through its staff, the respondent.

§79.5. Appearance.

(a) A respondent shall enter an appearance by filing a written answer or other responsive pleading with the SOAH, with a copy to the other party, within 20 days of the date on which the notice of hearing and formal complaint or petition is served on the respondent.

(b) The failure of the respondent in an enforcement case to timely enter an appearance as provided in this section shall entitle the board to a continuance at the time of the hearing for such reasonable period of time as determined by the ALJ. The notice of hearing must contain the following language in capital letters in 10-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE BOARD STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

§79.6. Default Judgment.

(a) If a respondent in an enforcement case fails to appear in person or by legal representative on the day and at the time set for hearing, regardless of whether an appearance has been entered, the ALJ, pursuant to the SOAH's rules, on the motion of the petitioner, and adequate proof that proper notice under the APA and the SOAH rules was served upon the defaulting party, shall enter a default judgment in the matter adverse to the respondent.

(b) A default judgment granted under this section will be entered on the basis of the factual allegations contained in the notice of hearing and upon proof of proper notice to the respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the APA, §§2001.051, 2001.052, and 2001.054. In order for a default judgment to be entered under this section, the notice of hearing shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE FACTUAL ALLEGATIONS CONTAINED IN THE NOTICE OF HEARING BEING ADMITTED AS TRUE AND THE PROPOSED RELIEF REQUESTED BY BOARD STAFF SHALL BE GRANTED BY DEFAULT.

§79.7. Depositions, Subpoenas, and Witness Expenses.

(a) Upon the written request of any party, the executive director may issue a commission for a deposition or a subpoena to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper in a contested case hearing held under this chapter.

(b) If the commission or subpoena is for the attendance of a witness at a deposition or at a hearing, the written request shall contain the name, address, and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the individual or entity who has custody or control over the items and the date on which and the location at which the items are sought to be produced. Each request for a subpoena, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of a subpoena, the executive director shall issue the subpoena in the form described in the APA, §2001.089.

(d) The executive director, with the approval of the Enforcement Committee, may issue a commission or subpoena prior to the filing of a formal complaint under §78.8(d) of this title (relating to Rules of Practice), if, in the opinion of the executive director, such a commission or subpoena is necessary to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the law or board rules or orders. The commission or subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

(e) A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the commission or subpoena, as provided by either the APA, §2001.103, or the State of Texas Travel Allowance Guide for state employees issued by the comptroller of public accounts, whichever is greater.

(f) At the time, a party, other than the board, requests that a commission or subpoena be issued, the party shall submit to the board an amount of money sufficient to cover the amount of anticipated expenses incurred in complying with the subpoena, as determined by the executive director. No subpoena or commission will be issued until such funds are deposited. The board shall pay a witness or deponent who is entitled to reimbursement under this section from the funds deposited by the party or from its own funds if the person is subpoenaed by the board, on presentation of proper vouchers sworn by the witness and approved by the board. All monies not paid out shall be returned to the party who submitted the funds for deposit.

(g) Payment of expenses under this section is governed by the APA, §2001.103.

§79.8. Hearing Exhibits and Record.

(a) Because of the often voluminous nature of the records properly received into evidence by the Administrative Law Judge (ALJ), the party introducing such documentary evidence may paginate each such exhibit or flag pertinent pages in each such exhibit in order to expedite the hearing and the decision-making process.

(b) Each hearing will be recorded by a court reporter unless the parties agree otherwise and not required by the SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript. The request shall be sent directly to the court reporter, with written notice to the other party of the request.

(c) A party who appeals a final decision of the board shall pay all of the costs of preparation of the original and any certified copy of the administrative record of the proceeding that is required to be transmitted to the reviewing court.

(1) The record in a contested case shall include the following listed in subparagraphs (A) - (I) of this paragraph:

(A) all pleadings filed with the board or the ALJ;

(B) all exhibits admitted by the ALJ;

(C) a statement of the matters officially noticed;

(D) questions and offers of proof, objections, and rulings thereon;

(E) the proposal for decision of the ALJ;

(F) all written rulings or orders by the ALJ;

(G) all party correspondence filed with the ALJ in connection with his or her consideration of the case;

(H) the transcribed statement of facts (Q & A testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts; and

(I) the final order of the board.

(2) Calculation of costs for preparation of the administrative record is governed by the same procedure utilized by the board in preparing documents responsive to open records requests pursuant to the Public Information Act. These costs shall include the cost of research, document retrieval, copying, and labor.

§79.9. Proposal for Decision.

(a) Within a reasonable time after the conclusion of the hearing, the Administrative Law Judge (ALJ) shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law.

(b) In the proposal for decision, the ALJ may recommend to the board as an appropriate disciplinary sanction, either the relief sought by board staff or another sanction, upon a finding of a violation in accordance with §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Sanctions, respectively). In a licensure case, the ALJ's recommendation shall be either the relief sought by the board staff, or other action in accordance with Chapter 78 of this title (relating to Rules of Practice), the Chiropractic Act or other applicable law.

(c) Any party of record who is adversely affected by the proposal for decision of the ALJ may file exceptions and a supporting brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of exceptions. Exceptions and replies shall be filed with the ALJ, with a copy served on the opposing party.

§79.10. Decision of the Board.

(a) The board shall render the final decision in all cases, including the denial of a license or registration, revocation, temporary suspension, reprimand, and/or administrative penalties. The final order of the board shall be in writing. A party or the ALJ may submit to the board a proposed order based on the proposal for decision for consideration by the board. The board, with the advice of its legal counsel, will determine the form and content of the board's final order.

(b) The proposal for decision may be acted on by the board after the expiration of 10 business days after the filing of replies to exceptions to the proposal for decision.

(c) It is the policy of the board that it may change recommended findings of fact or conclusions of law in a proposal for decision, or vacate or modify an order issued by the ALJ when the board determines:

(1) that the ALJ did not properly apply or interpret applicable law or rules, board policies or prior administrative decisions;

(2) that a prior administrative decision of the board on which the ALJ relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(d) If the board modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the ALJ, the board's final order shall state the legal basis and the specific reasons for the change.

(e) A copy of the final order shall be mailed to all parties.

(f) The decision of the board is immediate, final and appealable upon the signing of the written order by the board where:

(1) the board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(g) Motions for rehearing are governed by the APA, Subchapter F. A motion for rehearing and replies to a motion shall be filed with the board, with a copy to the opposing party and the ALJ.

§79.11. Extensions of Time.

The Executive Director may enter into an agreement with parties to a contested case to modify time limits as provided under the Administrative Procedure Act, Texas Government Code §2001.147.

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

Filed with the Office of the Secretary of State on September 9, 2014.

TRD-201404345
Bryan D. Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-6715

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31, 291.33, 291.34

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions; §291.33, concerning Operational Standards; and §291.34, concerning Records. The amendments to §291.31, if adopted, update the definition of a new prescription drug order. The amendments to §291.33, if adopted, update the patient counseling requirements allowing written information about a medication to be provided to patients electronically, eliminate the requirement that the pharmacy have a patient prescription drug information reference text or leaflets available for patients, eliminate the requirement that a patient is offered information about refilled prescriptions, and eliminate the sign regarding the availability of a pharmacist to ask questions. The amendments to §291.34, if adopted, update the requirements for transferring prescriptions to be consistent with the Drug Enforcement Administration (DEA) requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will be to ensure pharmacists provide adequate patient counseling and transfer prescriptions in accordance with DEA requirements in order to adequately protect the public. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy by mail at 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701 or by fax at (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2014.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 -569, Texas Occupations Code.

§291.31. Definitions.

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

(1) - (27) (No change.)

(28) New prescription drug order--A prescription drug order that[~~:~~]

[~~(A)~~] has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year.[~~;~~]

[~~(B) is transferred from another pharmacy; and/or~~]

[~~(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)~~]

(29) - (46) (No change.)

§291.33. Operational Standards

(a) (No change.)

(b) Environment.

(1) General requirements.

(A) - (B) (No change.)

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall be:

(I) easily accessible to both patient and pharmacists and not allow patient access to prescription drugs; and

(II) designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) - (G) (No change.)

(2) - (3) (No change.)

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) [~~the~~] name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the patient and printed in an easily readable font [size] comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

[*(iii)* A Class A pharmacy shall make available for use by the public a current or updated patient prescription drug information reference text or leaflets designed for the patient.]

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system, which is designed to assure that the drugs are delivered to the appropriate patient.

[(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.]

[(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy

~~where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.~~]

(G) [~~(I)~~] The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices Act;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph the pharmacist shall document on the hard-copy or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(i) date the prescriber was consulted;

(ii) name of the person communicating the prescriber's instructions;

(iii) any applicable information pertaining to the consultation; and

(iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if on the information is recorded on the hard-copy prescription.

(3) - (8) (No change.)

(d) - (i) (No change.)

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

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

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped and if for a controlled substance, the DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed numerically and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code the:

(I) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) address and telephone number of the clinic where the prescription drug order was carried out or signed.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(8) - (10) (No change.)

(c) - (f) (No change.)

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist; by a pharmacist to a student-intern, extended-intern, or resident-intern; or by a student-intern, extended-intern, or resident-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall ensure the following occurs:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system; [and]

(B) record the name, address, if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, name, address and DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

[(B) the following information is recorded on the reverse of the invalidated prescription drug order or stored with the invalidated prescription drug order in the data processing system:]

[*(i)* the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;]

[*(ii)* the name of the individual receiving the prescription drug order information;]

[*(iii)* the name of the individual transferring the prescription drug order information; and]

[*(iv)* the date of the transfer.]

(6) The individual receiving the transferred prescription drug order information shall [ensure the following occurs]:

(A) write the word "transfer" on the face of the prescription or the prescription record indicates the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and including the following information;

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining and date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and the following:

(i) date of original dispensing;

(ii) number of refills remaining and the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

[(B) the following information if recorded on the prescription drug order or is stored with the prescription drug order in the data processing system:]

[(i) original date of issuance and date of dispensing or receipt, if different from date of issuance;]

[(ii) original prescription number and the number of refills authorized on the original prescription drug order;]

[(iii) number of valid refills remaining and the date of last refill, if applicable;]

[(iv) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and]

[(v) name of the individual transferring the prescription drug order information.]

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically [using a data processing system] shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone.

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(C) If the data processing system does not have the capacity to store all the information as specified [required] in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order.

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the pharmacies' data processing systems shall store all the information as specified [required] in paragraphs (5) and (6) of this subsection.

(ii) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records.

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner. When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation including the formula unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(10) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this section is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) - (l) (No change.)

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

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §§291.52 - 291.54

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions; §291.53, concerning Personnel; and §291.54, concerning Operational Standards. The amendments to §291.52, if adopted, update the definitions. The amendments to §291.53, if adopted, clarify the requirements for compounding sterile non-radiopharmaceuticals. The amendments to §291.54, if adopted, require nuclear pharmacies to be inspected prior to renewal.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure nuclear pharmacies compounding sterile preparations will be inspected. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, by mail at 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701 or by fax at (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2014.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

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

(7) Aseptic processing--A mode of processing pharmaceutical and medical products that involves the separate sterilization of the product and of the package (containers/closures or packaging material for medical devices) and the transfer of the product into the container and its closure under at least ISO Class 5 conditions. [~~The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.~~]

(8) - (13) (No change.)

(14) Clean room [~~or controlled area~~]--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(15) - (17) (No change.)

(18) Critical site--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampuls, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time. [~~Sterile ingredients of compounded sterile preparations and locations on devices and components used to prepare, package, and transfer compounded sterile preparations that provide opportunity for exposure to contamination.~~]

(19) - (43) (No change.)

§291.53. Personnel.

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

(c) Authorized nuclear pharmacists.

(1) (No change.)

(2) Special requirements for compounding of non-radiopharmaceutical preparations.

(A) Non-sterile preparations. All pharmacists engaged in compounding non-sterile non-radiopharmaceuticals shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(B) Sterile Preparations. All pharmacists engaged in compounding sterile non-radiopharmaceuticals shall meet the training requirements specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(3) (No change.)

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) (No change.)

(2) Special requirements for compounding of non-radiopharmaceutical preparations.

(A) Non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile non-radiopharmaceuticals shall meet the training requirements specified in §291.131 of this title.

(B) Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding sterile non-radiopharmaceuticals shall meet the training requirements specified in §291.133 of this title.

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

[~~(e) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile radiopharmaceuticals. All pharmacy personnel preparing sterile radiopharmaceuticals shall meet the training requirements specified in §291.133 of this title.~~]

§291.54. Operational Standards.

(a) Licensing requirements.

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

(4) A Class B pharmacy may not renew a pharmacy license unless the pharmacy has been inspected by the board within the last renewal period.

(5) [(4)] A Class B pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(6) [(5)] A Class B pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(7) [(6)] A Class B pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(8) [(7)] A Class B pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(9) [(8)] A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(10) [(9)] A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(11) [(10)] A Class B pharmacy, licensed under the provisions of the Act, §560.051(a)(2), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions); §291.32 of this title (relating to Personnel); §291.33 of this title (relating to Operational Standards); §291.34 of this title (relating to Records); and §291.35 of this title (relating to Official Prescription Requirements), to the extent such rules are applicable to the operation of the pharmacy.

(12) [(11)] A Class B (nuclear) pharmacy engaged in the compounding of non-sterile non-radioactive preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(13) [(12)] A Class B (nuclear) pharmacy engaged in the compounding of sterile non-radioactive preparations shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(b) Risk levels for compounded sterile radiopharmaceuticals. Risk Levels for sterile compounded radiopharmaceuticals shall be as listed below.

(1) Low-risk level compounded sterile radiopharmaceuticals.

(A) Low-risk level compounded sterile radiopharmaceuticals are those compounded under all of the following conditions.

(i) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(ii) The compounding involves only transfer, measuring, and mixing manipulations with closed or sealed packaging systems that are performed promptly and attentively.

(iii) Manipulations are limited to aseptically opening ampuls, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices and packages of other sterile products.

[*(iv)* For a low-risk preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following periods: before administration, 48 hours at controlled room temperature, for not more than 14 days if stored in cold temperatures, and for 45 days if stored in a frozen state at minus 20 degrees Celsius or colder). For delayed activation device systems, the storage period begins when the device is activated.]

(B) Examples of low-risk compounding include radiopharmaceuticals compounded from sterile components in closed sterile containers and with a volume of 100 mL or less for a single-dose injection or not more than 30 mL taken from a multidose container.

(2) Medium-risk level compounded sterile radiopharmaceuticals.

(A) Medium-risk level compounded sterile radiopharmaceuticals are those compounded aseptically under low-risk conditions and one or more of the of the following conditions exists.

(i) Multiple individual or small doses of sterile products are combined or pooled to prepare [a] compounded sterile radiopharmaceuticals that will be administered either to multiple patients or to one patient on multiple occasions.

(ii) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(iii) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing.

(iv) The sterile compounded radiopharmaceuticals do not contain broad-spectrum bacteriostatic substances, and they are administered over several days.

[*(v)* For a medium-risk preparation, in the absence of passing sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature for not more than 7 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.]

(B) Examples of medium-risk compounding include the following.

(i) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(ii) Filling of reservoirs of injection and infusion devices with multiple sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(iii) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(iv) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(3) High-risk level compounded sterile radiopharmaceuticals.

(A) High-risk level compounded sterile radiopharmaceuticals are those compounded under any of the following conditions.

(i) Non-sterile ingredients, including manufactured products are incorporated, or a non-sterile device is employed before terminal sterilization.

(ii) Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.

(iii) Non-sterile preparations are exposed no more than 6 hours before being sterilized.

(iv) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

[~~*(v)* For a high-risk preparation, in the absence of passing sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature for not more than 3 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.~~]

(B) Examples of high-risk compounding include the following.

(i) Dissolving non-sterile bulk drug and nutrient powders to make solutions, which will be terminally sterilized.

(ii) Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.

(iii) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(iv) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(c) - (f) (No change.)

(g) Radiopharmaceuticals and/or radioactive materials.

(1) General requirements.

(A) - (B) (No change.)

(C) An authorized nuclear pharmacist may transfer to authorized users radioactive materials not intended for drug use in accordance with the requirements of the Texas Department of State Health Services, Radiation Control Program, Texas Administrative Code, Title 25, Part 1, Subchapter F, §289.252 relating to Licensing of Radioactive Material[~~,~~].

(D) (No change.)

(2) - (3) (No change.)

(h) - (i) (No change.)

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

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions. The amendments, if adopted, add a new definition regarding hospital bed size and how bed size is determined.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure hospital pharmacies comply with appropriate rules according to the size of the hospital. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, by mail at 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701 or by fax at (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2014.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.72. Definitions.

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

(1) - (30) (No change.)

(31) Number of beds--The total number of inpatients admitted during the previous calendar year divided by 365 (or 366 if the previous calendar year is a leap year).

(32) [~~(31)~~] Part-time pharmacist--A pharmacist either employed or under contract, who routinely works less than full-time.

(33) [~~(32)~~] Patient--A person who is receiving services at the facility (including patients receiving ambulatory procedures and patients conditionally admitted as observation patients), or who is receiving long term care services or Medicare extended care services in a

swing bed on the hospital premise or an adjacent, readily accessible facility that is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility. A patient includes a person confined in any correctional institution operated by the state of Texas.

(34) [~~(33)~~] Perpetual inventory--An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(35) [~~(34)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(36) [~~(35)~~] Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(37) [~~(36)~~] Pharmacy and therapeutics function--Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(38) [~~(37)~~] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(39) [~~(38)~~] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(40) [~~(39)~~] Pre-packaging--The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original container into unit-dose packaging or a multiple dose container for distribution within the facility except as specified in §291.74(f)(3)(B) of this title (relating to Operational Standards).

(41) [~~(40)~~] Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(42) [~~(41)~~] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(43) [~~(42)~~] Rural hospital--A licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(44) [~~(43)~~] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(45) [~~(44)~~] Supervision--

(A) Physically present supervision--In a Class C pharmacy, a pharmacist shall be physically present to directly supervise pharmacy technicians or pharmacy technician trainees.

(B) Electronic supervision--In a Class C pharmacy in a facility with 100 beds or less, a pharmacist licensed in Texas may electronically supervise pharmacy technicians or pharmacy technician trainees to perform the duties specified in §291.73(e)(2) of this title (relating to Personnel) provided:

(i) the pharmacy uses a system that monitors the data entry of medication orders and the filling of such orders by an electronic method that shall include the use of one or more the following types of technology:

(I) digital interactive video, audio, or data transmission;

(II) data transmission using computer imaging by way of still-image capture and store and forward; and

(III) other technology that facilitates access to pharmacy services;

(ii) the pharmacy establishes controls to protect the privacy and security of confidential records;

(iii) the pharmacist responsible for the duties performed by a pharmacy technician or pharmacy technician trainee verifies:

(I) the data entry; and

(II) the accuracy of the filled orders prior to release of the order; and

(iv) the pharmacy keeps permanent digital records of duties electronically supervised and data transmissions associated with electronically supervised duties for a period of two years.

(C) If the conditions of subparagraph (B) of this paragraph are met, electronic supervision shall be considered the equivalent of direct supervision for the purposes of the Act.

(46) [~~(45)~~] Tech-Check-Tech--Allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(47) [~~(46)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(48) [~~(47)~~] Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(49) [~~(48)~~] Unusable drugs--Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(50) [~~(49)~~] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act Subtitle B, Chapter 157, Occupations Code.

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

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy proposes amendments to §291.121, concerning Remote Pharmacy Services. The amendments, if adopted, clarify the requirements for emergency kits using automated systems and bar-code type technology.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will be to ensure pharmacies are using technologies that limit the risk of errors when stocking emergency kits using automated systems and bar-code type technology. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, by mail at 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701 or by fax at (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2014.

The amendments are proposed under §§551.002, 554.051, and 562.108 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 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 Board interprets §562.108 as authorizing the agency to relating to emergency kits including the procedures regarding the use of drugs from an emergency medication kit and security requirements for emergency kits.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.121. Remote Pharmacy Services.

(a) (No change.)

(b) Remote pharmacy services using emergency medication kits.

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

(4) Operational standards.

(A) - (E) (No change.)

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded [~~removable cartridges or containers to hold drugs~~], the prepackaging of the [~~cartridges or~~] containers or unit dose drugs shall occur at the provider pharmacy unless provided by a [~~and~~] FDA approved repackager. The prepackaged [~~cartridges or~~] containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the [~~cartridge or~~] container or unit dose drug has been properly filled and labeled;

(II) the individual [~~cartridges or~~] containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) (No change.)

(5) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2014.

TRD-201404389

Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-8028

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments, if adopted, clarify that the section applies to Class B pharmacies preparing non-radioactive sterile preparations and not radioactive pharmaceuticals.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure nuclear pharmacies are preparing non-radioactive preparations in compliance with the section. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, by mail at 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701 or by fax at (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2014.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, [~~Class B,~~] Class C-S, and Class E-S pharmacies; and compounding of sterile non-radioactive preparations pursuant to a prescription or medication order for a patient from a practitioner in a Class B pharmacy;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, [~~Class B,~~] Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner; and compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile non-radioactive preparation in a Class B pharmacy to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2014.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-8028

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.43

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC Chapter 537, Professional Agreements and Standard Contracts.

The proposed amendments to §537.43 are made following a comprehensive quadrennial rule review of Chapter 537 to better reflect current TREC procedures and to simplify and clarify where needed. Throughout the chapter, the proposed amendments capitalize the term "Commission" and delete the publication information that will be located elsewhere in the chapter.

Kerri Lewis, 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 section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be better readability of the chapter.

Comments on the proposal may be submitted to Kerri Lewis, 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 licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§537.43. Standard Contract Form TREC No. 36-8.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-8 approved by the [~~Texas Real Estate~~] Commission in 2014 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. [~~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.~~]

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

Filed with the Office of the Secretary of State on September 9, 2014.

TRD-201404332
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 936-3092

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.10, concerning Supervision of Non-Veterinarians.

Section 573.10 currently provides that veterinarians "should" delegate greater responsibility to a licensed veterinary technician than to an unlicensed person. However, §801.363 of the Texas Veterinary Licensing Act, Chapter 801 of the Texas Occupations Code, provides that veterinarians "may" delegate greater responsibility to licensed veterinary technicians. The Board proposes this amendment to conform to the statute and, thus, amend the word "should" in the rule to "may."

The Board further proposes to amend the rule to clarify that if the exception for emergency care is followed, then that veterinarian is not in violation of §801.351 of the Texas Veterinary Licensing Act. The exception currently states that in an emergency situation, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. However, §801.351 of the Texas Veterinary Licensing Act requires that a veterinarian establish a veterinarian-client-patient relationship prior to practicing veterinary medicine. To establish such a relationship, the veterinarian must examine the animal. This amendment would clarify that the exception provided in the rule for emergency situations will not cause a veterinarian to violate §801.351 of the Veterinary Licensing Act.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding supervision of non-veterinarians.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail at vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to provide for the regulation of veterinary technicians; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.10. Supervision of Non-Veterinarians.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this title (relating to Dentistry); or

(2) individuals performing any form of musculoskeletal manipulation, including but not limited to animal chiropractic, in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider whether the individual is licensed by the Board, as well as the level of training and experience of the non-veterinarian, when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) When feasible, a veterinarian may [~~should~~] delegate greater responsibility to a licensed veterinary technician than to an unlicensed person.

(1) Veterinary supervision of licensed veterinary technicians:

(A) Under the direct or immediate supervision of a veterinarian, a licensed veterinary technician may:

(i) suture to close existing surgical skin incisions and skin lacerations;

(ii) induce anesthesia; and

(iii) in dogs and cats, extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator.

(B) Except where otherwise prohibited by law, under general veterinary supervision, a licensed veterinary technician may:

(i) draw blood; and

(ii) take samples for purposes of testing and diagnosis.

(2) Veterinary supervision of unlicensed employees:

(A) Under the immediate supervision of a veterinarian, an unlicensed employee of a veterinarian may:

(i) suture to close existing surgical skin incisions and skin lacerations; and

(ii) induce anesthesia.

(B) An unlicensed employee of a veterinarian may perform other tasks assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian.

(C) An unlicensed employee may not, under any level of veterinary supervision, extract loose teeth or dental fragments from a dog or cat.

(e) Under the immediate supervision of a licensed veterinary technician, an unlicensed employee of a veterinarian may:

(1) suture to close existing skin incisions and skin lacerations;

(2) induce anesthesia;

(3) draw blood;

(4) take samples for the purpose of testing and diagnosis and;

(5) perform other tasks in veterinary medicine, not otherwise prohibited by other subsections of this section or other laws, as assigned by the supervising veterinarian and according to a protocol established by the supervising veterinarian.

(f) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title, and as allowed for licensed veterinary technicians under subsection (d)(1) of this section;

(3) diagnosis and prognosis of animal diseases and/or conditions;

(4) prescribing drugs and appliances; or

(5) initiate treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

(g) Euthanasia may be performed by a non-veterinarian only under the immediate supervision of a veterinarian.

(h) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(i) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(j) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication and not be in violation of §801.351 of the Act. However, the [~~The~~] Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(k) Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient relationship exists.

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

Filed with the Office of the Secretary of State on September 15, 2014.

TRD-201404399
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-7563

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.22

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.22, concerning Professional Standard of Care.

Section 573.22 currently requires licensees to exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good

standing in the "locality or community" in which they practice, or in similar communities. The Board proposes this amendment to clarify the long standing policy and interpretation that the word "community" refers to a geographic community or locality and not a demographic community such as a type of veterinary clinic.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding the professional standard of care.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.22. Professional Standard of Care.

Licensees shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.

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

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TRD-201404401
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-7563

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22 TAC §573.29

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.29, concerning Complaint Information and Notice to Clients.

Section 573.29 currently requires all licensees to provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. The Board proposes this amendment to clarify that licensed veterinary technicians are not required to provide such information. As licensed veterinary technicians are assisting licensed veterinarians, the onus should be placed on the veterinarian to provide such information.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding complaint information and notice to clients.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to provide for the regulation of veterinary technicians; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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

§573.29. Complaint Information and Notice to Clients.

(a) A licensed veterinarian or licensed equine dental provider [~~licensee~~] shall provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. The licensee must provide:

(1) the following specific address: Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942;

(2) the Board's telephone numbers: (512) 305-7555; fax: (512) 305-7556; and

(3) a toll-free complaint information number: 1-800-821-3205.

(b) Acceptable forms of providing the information in subsection (a) of this section may include a:

(1) written notice form, with print size of at least 14 point, prominently displayed in the area of each clinic or hospital that is most frequented by the public;

(2) brochure available in the area of each clinic or hospital that is most frequented by the public; or

(3) statement on each written bill, invoice or receipt.

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

Filed with the Office of the Secretary of State on September 15, 2014.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.41

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.41, concerning Use of Prescription Drugs.

Section 573.41 currently requires all licensees to adhere to the laws of the State of Texas, other states, or the United States. The Board proposes this amendment to clarify within §573.41, regarding prescription drugs, that a licensed veterinarian must comply with the laws of the State of Texas and the United States specifically concerning prescription drugs.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding the use of prescription drugs.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.41. Use of Prescription Drugs.

(a) It is unprofessional conduct for a licensed veterinarian to prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a veterinarian/client/patient relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

<u>(c) A licensed veterinarian prescribing, administering, dispensing, delivering, or ordering delivered any prescription drug must comply with the laws, including all rules, of both the United States and the State of Texas, including but not limited to Chapter 483 of the Texas Health and Safety Code.</u>

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

Filed with the Office of the Secretary of State on September 15, 2014.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 305-7563

22 TAC §573.43

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.43, concerning Controlled Substances Registration.

Section 573.43 currently requires all licensees to adhere to the laws of the State of Texas, other states, or the United States. The Board proposes this amendment to clarify within §573.43, regarding controlled substances, that a licensed veterinarian must comply with the laws of the State of Texas and the United States specifically concerning controlled substances.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding controlled substances.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.43. Controlled Substances Registration.

(a) Subject to subsection (b) of this section, a licensed veterinarian may not prescribe, administer, dispense, deliver, or order delivered, any controlled substance unless the licensed veterinarian is currently registered with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) to dispense controlled substances if such registration is required by other state or federal law.

(b) The requirement for DEA registration is waived for a licensed veterinarian who is not registered with the DEA to dispense controlled substances if:

(1) a licensed veterinarian who is registered with the DEA to dispense controlled substances (registrant) supervises or employs the veterinarian who is not registered with the DEA to dispense controlled substances (non-registrant);

(2) the registrant has knowledge that the non-registrant is dispensing and/or administering controlled substances in the usual course of the non-registrant's duties;

(3) the registrant has given written permission for the non-registrant to dispense/administer under the registrant's license; and

(4) the registrant has actual knowledge that the non-registrant is currently registered with the DPS and holds a current DPS controlled substances certificate.

(c) A licensed veterinarian who is not registered with the DEA but is registered with the DPS to dispense controlled substances and holds a current DPS controlled substances certificate may dispense and administer controlled substances, but may not procure, purchase or issue a prescription for a controlled substance.

(d) A licensed veterinarian registered with the DEA and/or DPS must comply with all relevant statutes and rules as required by DEA and/or DPS, including but not limited to Chapter 481 of the Texas Health and Safety Code, Chapter 13 of Part 1 of Title 37 of the Texas Administrative Code, and Chapter 13 of Title 21 of United States Code.

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

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.74

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.74, concerning Management Services Organizations in Veterinary Practice.

Section 573.74 currently provides that a veterinarian or group of veterinarians that contract with a management services organization shall make available for inspection by the Board copies of the contracts with the management services organizations. The Board proposes this amendment to clarify that the contract must be a written contract.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding management services organizations in veterinary practice.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.74. Management Services Organizations in Veterinary Practice.

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

(1) Control--the ability to order or dictate the delivery or the manner of delivery of any services or tasks. Consulting with another person regarding a service or task, or assisting in the performance of a service or task, does not constitute control.

(2) Intervene--directly altering the practice of veterinary medicine. Recommending or providing a service or supply or performing management services under this section does not constitute intervention.

(3) Management services--those services and activities relating to the operation of a veterinary practice exclusive of the practice of veterinary medicine.

(4) Management services organization--a person or entity that provides management services.

(5) Veterinary medical personnel--persons under the direct or general supervision, as defined by the Veterinary Licensing Act, Texas Occupations Code, §801.002, of a veterinarian who perform duties directly related to the practice of veterinary medicine.

(b) Management Services Contracts. A veterinarian or group of veterinarians, whether or not incorporated, may contract with a management services organization to provide management services.

(c) Prohibited Practices. A management services organization shall not control or intervene in a veterinarian's practice of veterinary medicine. Prohibited activities by a management services organization, whether or not authorized by contract, include but are not limited to:

(1) employing a veterinarian to practice veterinary medicine;

(2) determining the compensation of a veterinarian for the practice of veterinary medicine;

(3) controlling or intervening in a veterinarian's diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(4) controlling or intervening in a veterinarian's selection or use of type or quality of medical supplies and pharmaceuticals to be used in the practice of veterinary medicine;

(5) determining the amount of time a veterinarian may spend with a patient;

(6) owning drugs, unless the drugs are owned in compliance with applicable Texas or federal law;

(7) owning and controlling the records of patients of the veterinarian;

(8) determining the fees to be charged by the veterinarian for the veterinarian's practice of veterinary medicine;

(9) mandating compliance with specific professional standards, protocols or practice guidelines relating to the practice of veterinary medicine;

(10) placing limitations or conditions upon communications that are clinical in nature with the veterinarian's clients;

(11) requiring a veterinarian to make referrals in violation of Texas Occupations Code §801.402(11); or

(12) penalizing a veterinarian for reporting violations of a law regulating the practice of veterinary medicine.

(d) Veterinarians, and entities in which veterinarians are the sole owner, shareholders or partners, are not prohibited from performing the activities set out in subsection (c)(1) - (10) of this section.

(e) Permitted Management Services. Permitted activities by a management services organization include but are not limited to:

(1) providing by lease, ownership or other arrangement:

(A) the facility used by the veterinarian in the practice of veterinary medicine;

(B) the medical equipment, instruments and supplies used by the veterinarian in the practice of veterinary medicine; and

(C) the business, office and similar non-medical equipment used by the veterinarian.

(2) providing for the repair, maintenance, renovation, replacement or otherwise of any facility or equipment used by the veterinarian in the practice of veterinary medicine;

(3) providing accounting, financial, payroll, bookkeeping, budget, investment, tax compliance and similar financial services to the veterinarian;

(4) providing information and information systems and services for the veterinarian so long as any patient records in these systems are clearly owned and freely accessed by the veterinarian;

(5) providing the services of billing and collection of the veterinarian's fees and charges;

(6) arranging for the collection or sale of the veterinarian's accounts receivable;

(7) providing advertising, marketing and public relations services in compliance with §§573.30 - 573.37 of this title (relating to

Advertising, Endorsements and Certificates) pertaining to the practice of veterinary medicine;

(8) providing contract negotiation, drafting and similar services for the veterinarian;

(9) providing receptionist, scheduling, messaging and similar coordination services for the veterinarian;

(10) obtaining all licenses and permits necessary to operate a practice of veterinary medicine that may be obtained by a non-veterinarian, and assisting veterinarians in obtaining licenses and permits necessary to operate a practice of veterinary medicine that may be obtained only by a veterinarian, provided that the Executive Director of the Board approves the method of payment for veterinary license renewals paid by the management services organization;

(11) assisting in the recruiting, continuing education, training and legal and logistical peer review services for the veterinarian;

(12) providing insurance, purchasing and claims services for the veterinarian, and including the veterinarian and veterinary medical personnel on the same insurance policies and benefit plans as the management services organization;

(13) providing consulting, business and financial planning and business practice and other advice;

(14) establishing the price to be charged to the veterinary client for the goods and supplies provided or managed by the management services organizations;

(15) employing and controlling persons who:

(A) perform management services;

(B) are veterinarians employed by a management services organization to perform management services but not the practice of veterinary medicine; or

(C) perform management, administrative, clerical, receptionist, secretarial, bookkeeping, accounting, payroll, billing, collection, boarding, cleaning and other functions; or

(16) employing veterinary medical and other personnel, if a veterinarian present at the practice location who is in charge of veterinary medicine for that practice location at which the veterinary medical and other personnel work has the right to:

(A) control the medically related procedures, duties, and performance of the veterinary medical and other personnel; and

(B) suspend for medically related reasons the veterinary medical and other personnel unless the suspension is contrary to law, regulation or other legal requirements.

(f) Disclosure of Contracts.

(1) A veterinarian or a group of veterinarians that contract with a management services organization shall:

(A) make available for inspection by the Board at the main office of the veterinarian or group of veterinarians, pursuant to §573.66 of this title (relating to Disciplinary Action for Non-Compliance with Continuing Education Requirements), copies of the contracts with the management services organizations; and

(B) if the Board opens an investigation against a veterinarian or a group of veterinarians, make available to the Board copies of the contracts with the management services organizations.

(2) Verbal contracts will not be considered evidence of compliance with this rule.

(3) [(2)] Copies of contracts produced under this subsection shall be governed by the Veterinary Licensing Act, Texas Occupations Code, §801.207.

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 §573.76

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.76, concerning Notification of Licensee Addresses.

Section 573.76 currently provides that a licensee who conducts a mobile practice with no fixed clinic location shall not be required to provide a physical business address. The Board proposes this amendment to delete this exception to better protect the public. Specifically, the Board must be able to properly inspect licensees for compliance to the law. Such inspection requires an accurate physical business address. A mobile practice licensee could simply list their residence as their business address as long as an address is available for Board investigators to inspect.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding notification of licensee addresses so that the Board may conduct proper inspections of licensees.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.76. Notification of Licensee Addresses.

(a) Each licensee shall report to the Board the licensee's:

(1) name and license number;

(2) clinic or practice name;

(3) physical business address;

(4) mailing address;

(5) residence address;.

(6) business telephone number; and

(7) residence and/or cellular telephone number.

(b) A mailing address may be a post office box number. If a remote practice location does not have a physical business address, the licensee must provide as the physical business address sufficient directions as to how the practice location may be found.

(c) A relief veterinarian shall not be required to provide a clinic or practice name or a physical business address unless the relief veterinarian regularly conducts the largest percentage of his or her relief work at one clinic.

[~~(d) A licensee who conducts a mobile practice with no fixed clinic location shall not be required to provide a physical business address.~~]

(d) [~~(e)~~] A licensee shall notify the Board of any change of items required under subsection (a) of this section not later than the 60th day after the change takes place.

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 575. PRACTICE AND PROCEDURE

22 TAC §575.28

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.28, concerning Complaints--Investigations.

Section 575.28 currently provides the process and procedures for complaints. The Board proposes this amendment to clarify complaint procedures when the Board in the complainant. The amendments are not a change to policy or procedure. Specifically, the amendment provides that the correspondence the Board is usually required to send a complainant is not required when the complainant is actually the Board itself.

The Board also proposes an amendment to clarify the timing of the Report of Investigation that is completed by the Board's staff to conform to the actual practice and to §575.29 of this title (relating to Informal Conference). The Report of Investigation is completed after the initial investigation is completed by the Board's investigators. The full investigation is not complete until after the later of an informal conference, a determination that no violation occurred or there is insufficient evidence to proceed, or an agreed order is signed.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the rules regarding the process and procedures for the investigation of complaints.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant unless the complainant is the Board.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.

(7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, unless the complainant is the Board, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an initial investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to two veterinary licensee board members (veterinarian members) who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complainant at an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

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 §575.29

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.29, concerning Informal Conferences.

Section 575.29 currently permits the executive director or the director of enforcement to conduct an informal conference. It also

requires the executive director to explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain possible courses of action at the conclusion of the conference. The Board proposes this amendment to also allow the general counsel to also conduct informal conferences. For clarity and consistency, the amendment also allows the director of enforcement and the general counsel to explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain possible courses of action at the conclusion of the conference.

The Board further proposes to amend this rule to allow a licensee or complainant to provide evidence and comments to the enforcement committee at the time of the informal conference. That evidence and comments would become part of the investigation file and may be used within that case or in furtherance of a new case. This amendment is consistent with current policy.

Section 575.29 currently refers to the Board's informal proceeding as an "ISC." This terminology is not accurate and does not conform to terminology used within the Veterinary Licensing Act. The Board proposes this amendment to change the terminology to "informal conference" to conform to the language within the Veterinary Licensing Act and the Board Rules.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the procedure and terminology regarding informal conferences.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§575.29. Informal Conferences.

(a) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(b) The Board may be represented at the informal conference by an enforcement committee of the executive director, the two veterinarian members and a public member of the Board, the director of enforcement, the member of board staff assigned to investigate the complaint, and the Board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director, general counsel, or the director of enforcement shall conduct the conference.

(c) Contingency. The Board president shall appoint a third veterinary licensee board member to assume the duties of either of the veterinarian members in the complaint review and informal conference process in the event either of the veterinarian members is unable to serve in the capacity set out in this section and in §575.28 of this title (relating to Complaints--Investigations).

(d) Procedure. Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director, general counsel, or director of enforcement shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. Comments by the licensee may be used in furtherance of the current case against the licensee, any other case or investigation, and/or to initiate a new complaint or investigation. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record. The licensee or complainant may provide evidence to the enforcement committee that will be considered by the enforcement committee and become part of the investigation file.

(e) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee, or their designee, will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(f) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director, or their designee, will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director, or their designee, must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(g) Within the time period prescribed, the licensee must submit a written response to the Board:

(1) accepting the settlement offer and recommended disciplinary action; or

(2) requesting a hearing before an administrative law judge.

(h) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(i) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full Board for approval.

(j) Board staff may communicate directly with the board representative(s) after the informal conference [~~ISC~~] for the purpose of discussing settlement of the case.

(k) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting.

(l) The recommendations may be adopted, modified, or rejected by the Board.

(m) If the Board approves the agreed order with amendments, the executive director, or their designee, shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the Board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the Board may direct the executive director to take other appropriate action.

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 §575.30

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.30, concerning Contested Case Hearing at SOAH.

Section 575.30 currently addresses the procedures for contested case hearings before the State Office of Administrative Hearings (SOAH) regarding licensees. However, the Board also has contested case hearings before SOAH for non-licensed individuals that are potentially in violation of the Texas Veterinary Licensing Act or the Board's Rules. The Board proposes this amendment to have the same procedures for contested cases against non-licensed individuals as for licensed individuals.

The Board further proposes an amendment in keeping with the current practice of SOAH to allow the Administrative Law Judge at SOAH to enter an order dismissing a case on the basis of default and allowing the Board to informally dispose of a case when the individual that is the subject of the case fails to appear for the contested case hearing.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the procedures regarding contested case hearings before SOAH.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§575.30. Contested Case Hearing at SOAH.

(a) If a licensee, [~~or~~] applicant for licensure, or unlicensed person in accordance with §575.40 of this title (relating to Cease and Desist Procedures) declines to sign a proposed agreed order or cease and desist order, or if the licensee, [~~or~~] applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to respond timely to a proposed agreed order or cease and desist order, or if the Board rejects a proposed agreed order, the board staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH). At least ten (10) days prior to a scheduled hearing, the notice of hearing shall be served on the licensee or applicant for licensure as set out in subsection (g)(1) of this section. Except in cases of temporary suspension, a notice of hearing shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's, [~~or~~] applicant for licensure's, or unlicensed person's address of record and the licensee, [~~or~~] applicant for licensure, or unlicensed person has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §801.408 of the Veterinary Licensing Act.

(b) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In

the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the Board, except when board rules provide the Board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(c) The administrative law judge (ALJ) has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, [~~Section~~] §2001.058(e), a party may file an interlocutory or interim appeal to the Board requesting that the Board vacate or modify an order issued by an ALJ.

(g) Notice of SOAH hearing; continuance and default.

(1) The Board shall provide notice of the time, date, and place of the hearing to the licensee, [~~or~~] applicant for licensure, or unlicensed person in accordance with §575.40 of this title. The notice shall include the requirements set forth in [~~Section~~] §2001.052 of the APA. The Board shall send notice of a contested case hearing before SOAH to the licensee's, [~~or~~] applicant for licensure's, or unlicensed person's last known address as evidenced by the records of the Board. Respondent is presumed to have received proper and timely notice three (3) days after the notice is sent to the last known address as evidenced by the records of the Board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(2) If the licensee, [~~or~~] applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to timely enter an appearance or answer the notice of hearing, the Board is entitled to a continuance at the time of the hearing. If the licensee, [~~or~~] applicant for licensure, or unlicensed person fails to appear at the time of the hearing, the Board may move either for dismissal of the case from the SOAH docket, or request that the ALJ issue a default proposal for decision in favor of the Board.

(3) Proof that the licensee, [~~or~~] applicant for licensure, or unlicensed person in accordance with §575.40 of this title has evaded proper notice of the hearing may also be grounds for the Board to request dismissal of the case or issuance of a default proposal for decision in favor of the Board.

(h) If a party submitted proposed findings of fact, the proposal for decision shall include a ruling on each proposed finding by the ALJ, including a statement as to why any proposed finding was not included in the proposal for decision.

(i) After receiving the ALJ's findings of fact and conclusions of law in the proposal for decision, the Board shall rule on the merits of the charges and enter an order. The Board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The Board shall promptly advise the complainant of the Board's action.

(j) If the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to appear for the contested case hearing at the designated time and place, the ALJ may enter an order dismissing the case on the basis of default and the Board may informally dispose of the case.

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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Loris Jones
Executive Assistant
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22 TAC §575.281

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.281, concerning Complaints--Appeals.

Section 575.281 currently refers to the Board's informal proceeding as an "ISC." This terminology is not accurate and does not conform to terminology used within the Texas Veterinary Licensing Act, Chapter 801 of the Texas Occupations Code. The Board proposes this amendment to change the terminology to "informal conference" to conform to the language within the Veterinary Licensing Act and Board rules.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the terminology used regarding complaints and the related processes.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must

be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§575.281. Complaints--Appeals.

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

(1) be in writing;

(2) be received in the Board office no later than the 60th day following the date of the complaint dismissal notification; and

(3) list the reason(s) for the appeal. The appeal should provide sufficient information to indicate that additional review is warranted.

(b) Review of an Appeal. Appeals will be considered by a veterinarian member of the board ("reviewing veterinarian"). Upon review of an appeal, the reviewing veterinarian may determine any of the following:

(1) The investigation should remain closed;

(2) Additional information needs to be obtained before a determination can be made as to whether a violation of the Act occurred;

(3) The case should be referred to an informal conference [~~ISC~~] for a determination.

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

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

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

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Loris Jones
Executive Assistant
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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.15, concerning Fee Schedule.

The Board proposes an amendment to §577.15 to add fees for equine dental provider licensees to cover the administrative costs associated with permitting renewals of licenses to occur on the Internet, through a third party vendor. The amendment would increases fees for expired license renewals by $5. The amendment would be effective January 1, 2015.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be an increase in revenue to state government as a result of the fees associated with the licensure renewals of equine dental providers. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria does not expect an increase in cost to state government as a result of the increase in fees, because the Board already processes license renewal fees, nor does she expect an increase or reduction in costs to local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the increase in funding through new and increased fees will allow the Board to renew licenses equine dental providers effectively and efficiently, and thereby continue to protect the interests of the public and the animals of Texas.

Ms. Oria has determined that there will be a slight increase in economic cost to equine dental providers seeking license renewal, both as individuals and as micro businesses. There is a possible difference in the cost of compliance between small and large businesses based purely on the number and type of licensees employed by the business if a larger business employs more equine dental providers, then it will have to pay proportionately more in licensing fees. The Board has approximately 45 active equine dental provider licensees, and it is appropriate to assume that a large majority of these licensees are likely owners of small businesses or micro businesses.

For equine dental providers renewing their licenses, the $5 increase in license renewal fees should not create a significant economic impact on the small or micro businesses that employ them or the small or micro businesses that they own. The fee is tailored specifically to pay the estimated costs that the Board will incur processing renewals that are received on the Internet. The Board therefore believes that there are no acceptable alternatives to the proposed fee that could reduce the adverse impact on small or micro businesses while still allowing the Board sufficient funding to adequately process renewals and thereby protect the health and safety of animals owned by the public in Texas. The economic cost will be offset by the efficiency achieved in providing the ability to renew one's license online.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer

the chapter; §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter; and §801.161, which requires the Board to ensure that the public is able to interact with the Board on the Internet.

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

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.
Figure: 22 TAC §577.15

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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Loris Jones
Executive Assistant
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §305.541.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is necessary to adopt by reference revisions to the United States Environmental Protection Agency (EPA) construction stormwater regulations, which were adopted in 40 Code of Federal Regulations (CFR) Part 450 and became effective on May 5, 2014.

The revisions to the federal regulations do not include any new regulatory requirements, but instead provides clarification to existing requirements and removes requirements related to the numeric turbidity effluent limitation. Specifically, the revisions include: defining "infeasible"; clarifying the applicability of requirements to control erosion caused by discharges; providing additional details on areas where buffers are required; clarifying requirements for soil stabilization, preservation of topsoil and pollution prevention measures; and withdrawing the numeric turbidity effluent limitation and monitoring requirements.

This rulemaking will amend §305.541 to adopt by reference revisions to 40 CFR Part 450, as published in the *Federal Register* on March 6, 2014 (79 FR 44). The clarifications added to the federal regulations will be incorporated into the Construction General Permit (CGP) at the time it is renewed in 2018. However, withdrawing the numeric turbidity effluent limitation in the federal regulations will not require a revision to the CGP, since this limitation was not incorporated into the 2013 CGP. In 2011, EPA stayed the numeric turbidity effluent limitation.

Currently, §305.541 adopts by reference certain parts of 40 CFR that were in effect at the time Texas was awarded delegation of the National Pollutant Discharge Elimination System (NPDES) program and specific parts that were adopted after delegation. This rulemaking will revise the reference to 40 CFR Part 450 to cite the *Federal Register* volume and date of publication related to the 2014 revisions to the construction stormwater regulations.

Section Discussion

The proposed amendment to §305.541 revises the *Federal Register* volume and date for 40 CFR Part 450 to reflect those associated to the 2014 revisions to the construction stormwater regulations.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The EPA promulgated effluent limitation guidelines and standards for the stormwater construction and development point source permit category in December 2009. In February 2014, EPA adopted revisions to those guidelines and standards which embodied agreements with parties who had filed petitions for review of that final rule. This proposed rule would incorporate by reference those 2014 revisions to 40 CFR Part 450.

The proposed amendment would do the following: 1) define "infeasible"; 2) clarify the applicability of requirements to control erosion caused by discharges; 3) provide additional details on areas where buffers are required; 4) clarify requirements for soil stabilization, preservation of topsoil and pollution prevention measures; and 5) withdraw numeric turbidity effluent limitation and monitoring requirements.

The proposed rule does not provide any new regulatory requirements for regulated entities nor does it reduce any regulatory requirements. The amendment merely provides clarification of current stormwater regulatory requirements. The rulemaking is necessary to keep commission rule synchronized with EPA's rules as required by the NPDES Memorandum of Agreement (MOA) the agency has with EPA.

The proposed rule will provide clarification of existing requirements and remove the numeric turbidity effluent limitation. When adopted, this rule will be added to the stormwater CGP when it is renewed in 2018. However, when the CGP is renewed, no changes are needed to reflect the removal of the numeric turbidity effluent limit because this limitation and associated monitoring were never incorporated into the CGP when it was renewed in 2013. At that time, the numeric turbidity effluent limit had been

stayed by the EPA and therefore was never incorporated into the CGP.

The proposed rule is not anticipated to result in any significant fiscal implications to the agency as it does not provide new regulatory requirements and merely clarifies existing requirements. No fiscal implications are anticipated for other units of state or local government for the same reasons.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be consistency with federal rules, clarity for the regulated community, and consistent enforcement of the construction stormwater regulations.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals. The proposed rule does not provide any new regulatory requirements for regulated entities nor does it reduce any regulatory requirements, it merely provides clarification of current stormwater regulatory requirements. The proposed rule will remove the numeric turbidity effluent limitation. When the current CGP is renewed, no changes will be needed to reflect the removal of the numeric turbidity effluent limit because this limitation and associated monitoring were not incorporated into the CGP when it was renewed in 2013. At that time, the numeric turbidity effluent limit had been stayed by the EPA and therefore was never incorporated into the CGP.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect for small or micro-businesses. The proposed rule will provide clarification of existing requirements and remove the numeric turbidity effluent limitation. The proposed rule is not expected to have fiscal implications for small or micro-businesses as the proposed revisions do not add or reduce regulatory requirements.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rule does not adversely affect a small or micro-business in a material way and is necessary to maintain consistency with federal rules in order to protect the public health, safety, environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by reference EPA's revised construction stormwater regulations found at 40 CFR Part 450. The specific intent of the proposed rulemaking is to amend the commission's rules to incorporate recent federal regulatory changes that do protect the environment and reduce risks to human health from environmental exposure, but that will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rule does not meet the definition of a "major environmental rule."

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the requirements of 40 CFR Part 450 or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather specifically under the MOA between EPA and the commission, which requires the commission to incorporate federal NPDES rules into the commission's rules. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to adopt by reference EPA's revised construction stormwater regulations found at 40 CFR Part 450. The proposed rule would substantially advance this stated purpose by revising the Federal Register volume and date for 40 CFR Part 450 to reflect those associated to EPA's 2014 revisions to the construction stormwater regulations in the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The commission is the regulatory agency that administers the state NPDES program and, therefore, is responsible for incorporating federal NPDES regulation changes into its permit program under 40

CFR §123.62(e) and the MOA between EPA and the commission.

Nevertheless, the commission further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with federal effluent limitations related to construction stormwater without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 - 33.210 and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rule includes ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 23, 2014, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-020-305-OW. The comment period closes October 27, 2014. Copies of the proposed rulemaking can be obtained from the commission's web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources; TWC, §26.027, which authorizes the commission to issue permits; TWC, §26.040, which authorizes the commission to issue general permits; and TWC, §26.121, which authorizes the commission to prohibit unauthorized discharges.

The proposed amendment implements the 2014 revisions to 40 Code of Federal Regulations Part 450.

§305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations (CFR), Subchapter N, Parts 400 - 471, except 40 CFR Part 403, which are in effect as of the date of the Texas Pollutant Discharge Elimination System program authorization, as amended, and 40 CFR Parts 437 *(Federal Register,* Volume 65, December 22, 2000), 442 *(Federal Register,* Volume 65, August 14, 2000), 444 *(Federal Register,* Volume 65, January 27, 2000), 445 *(Federal Register,* Volume 65, January 19, 2000), 449 *(Federal Register,* Volume 77, May 16, 2012), and 450 *(Federal Register,* Volume 79 [~~74~~], March 6, 2014 [~~December 1, 2009~~]), as amended, are adopted by reference.

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

Filed with the Office of the Secretary of State on September 12, 2014.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2141

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE
SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

31 TAC §65.175, §65.176

The Texas Parks and Wildlife Department (the department) proposes amendments to §65.175 and §65.176, concerning Threatened and Endangered Nongame Species.

The proposed amendment to §65.175, concerning Threatened Species, would update the scientific names of one species of snake and seven species of birds and would remove the margay *(Felis wiedii)* from the list of threatened species. The proposed amendment to §65.176, concerning Endangered Species, would add the Austin blind salamander *(Eurycea waterlooensis),* the diminutive amphipod *(Gammarus hyalleloides),* Pecos amphipod *(Gammarus pecos),* Diamond tryonia *(Pseudotryonia adamantina),* Phantom springsnail *(Pyrgulopsis texana);* Phantom tryonia *(Tryonia cheatumi),* and the Gonzales tryonia *(Tryonia circumstriata)* to the list of endangered species.

From time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy does not, in and of itself, affect the status of a species as endangered, threatened or protected, but the department believes that the common and scientific names of listed organisms should reflect the most current agreement by the scientific community. The scientific names for the gray hawk, interior least tern, sooty tern, Bachman's sparrow, Arizona Botteri's sparrow, Texas Botteri's sparrow, and tropical parula recently have been reclassified; therefore, the proposed amendments would reflect those changes. The margay is being removed from the list of threatened species as the last documented occurrence was made in the mid-19th century with no observations since. Otherwise the species is known only from Texas on the basis of fossilized remains.

Under Parks and Wildlife Code, Chapter 68, a species is endangered under state law if it is (1) indigenous to Texas and listed by the federal government as endangered; or (2) designated by the executive director of the Texas Parks and Wildlife Department as "threatened with statewide extinction." Tex. Parks & Wild. Code §68.002. At the current time, the department maintains a single list of endangered species that contains only those species indigenous to Texas listed by the federal government as endangered. The only species considered as "threatened with statewide extinction" under state law are those species listed by the federal government. The Austin blind salamander was listed as endangered by the U.S. Fish and Wildlife Service on September 19, 2013 and was inadvertently not added to the state endangered species list at the time. Similarly, the diminutive amphipod, the Pecos amphipod, the Diamond tryonia, Phantom tryonia, Phantom springsnail, and Gonzales tryonia were listed on July 9, 2013. The proposed amendment rectifies the oversights.

Under Chapter 68, the department is not required to list federally endangered species by rule; however, whenever the federal government modifies the list of endangered species, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state, but must provide notice of intent to file such an order at least 60 days prior to filing the order. Tex. Parks & Wild. Code §68.004. This rulemaking constitutes the department's notice of intent to modify the endangered species list which also serves as the list of species threatened with statewide extinction, as required under Chapter 68.

John Davis, Wildlife Diversity Program Director, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Davis also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be elimination of confusion between state and federal lists of endangered species, the protection of rare species, the opportunity for the public to enjoy the regulated use of recovered species, and regulations that are accurate and informative.

There will be no adverse economic impact on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the listing of species as "threatened with statewide extinction" merely reiterates the list of species listed as endangered by federal regulation, the department has determined that there will be no adverse economic impacts on small businesses or micro-businesses as a result of the proposed amendments. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Mr. John Davis, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8587, e-mail: john.davis@tpwd.texas.gov or on the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and Chapter 68, which authorizes regulations nec-

essary to administer the provisions of Chapter 68 and to attain its objectives, including regulations to govern the publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products and limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

The proposed amendments affect Parks and Wildlife Code, Chapters 67 and 68.

§65.175. Threatened Species.

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:
Figure: 31 TAC §65.175

§65.176. Endangered Species.

The following species are endangered species.
Figure: 31 TAC §65.176

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

Filed with the Office of the Secretary of State on September 15, 2014.

TRD-201404397
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 389-4775

CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

31 TAC §69.8

The Texas Parks and Wildlife Department (the department) proposes an amendment to §69.8, concerning Endangered and Threatened Plants. The proposed amendment would add one species to the list of endangered species of plants, remove one species from the list of threatened species of plants, and update the scientific names of three species of plants.

Under Parks and Wildlife Code, Chapter 88, a species of plant is endangered, threatened, or protected if it is indigenous to Texas and (1) listed by the federal government as endangered, or (2) designated by the executive director of the Texas Parks and Wildlife Department as endangered, threatened or protected. At the current time, the department maintains a single list of endangered plants that contains only those plants indigenous to Texas listed by the federal government as endangered. The Texas golden gladecress *(Leavenworthia texana)* was listed as endangered by the U.S. Fish and Wildlife Service on October 11, 2013 and was inadvertently not added to the state endangered list at the time. The proposed amendment rectifies that oversight.

Under Chapter 88, the department is not required to list federally endangered plants by rule; however, whenever the federal government modifies the list of endangered plants, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of endangered, threatened, and protected species by filing an order with the secretary of state, but must provide notice of intent to file such an order at least 60 days prior to filing the order. This rulemaking constitutes the department's notice of intent to modify the list of endangered, threatened, and protected native plants.

The proposed amendment also would remove the Pima pineapple cactus *(Coryphantha scheeri var. robustipina)* from the threatened species list because there is no evidence that the species occurs in Texas.

From time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy does not, in and of itself, affect the status of a species as endangered, threatened or protected, but the department believes that the common and scientific names of listed organisms should reflect the most current agreement by the scientific community. The scientific names for the Davis' green pitaya, white bladderpod, and Zapata bladderpod recently have been reclassified; therefore, the proposed amendment would reflect those changes.

The proposed amendment also eliminates the tabular format of the lists of endangered and threatened plants and simply lists the species.

John Davis, Wildlife Diversity Program Director, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Davis also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the elimination of confusion between state and federal lists of endangered species, protection of rare species, the opportunity for the public to enjoy the regulated use of recovered species, and regulations that are accurate and informative.

There will be no adverse economic impact on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the listing of species as "threatened with statewide extinction" merely reiterates the list of species listed as endangered by federal regulation, the department has determined that there will be no adverse economic impacts on small businesses or micro-businesses as a result of the proposed amendment. Accordingly, the department

has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Mr. John Davis, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8587, e-mail: john.davis@tpwd.texas.gov or on the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, Chapter 88, which requires the department t to adopt regulations to provide for the identification and publication of lists of endangered, threatened, or protected plants.

The proposed amendment affects Parks and Wildlife Code, Chapters 88.

§69.8. Endangered and Threatened Plants.

(a) The following plants are endangered:
Figure: 31 TAC §69.8(a)

(b) The following plants are threatened:
Figure: 31 TAC §69.8(b)

(c) Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy will not, in and of itself, affect the status of a species as endangered, threatened or protected.

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

Filed with the Office of the Secretary of State on September 15, 2014.

TRD-201404398
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 26, 2014
For further information, please call: (512) 389-4775

Devin McQueen
10th Grade

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

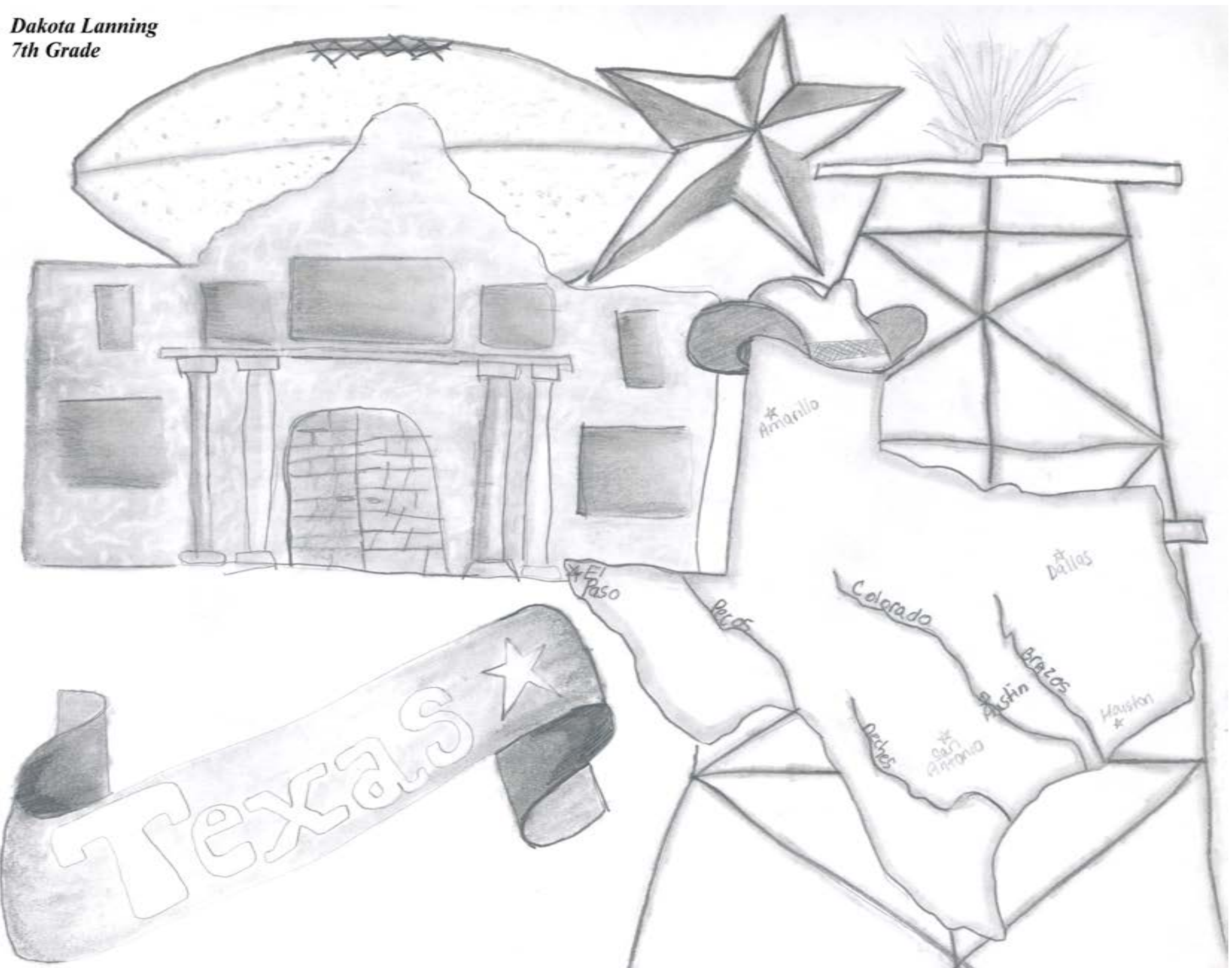
1 TAC §20.68

Proposed new §20.68, published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1557), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 9, 2014.

TRD-201404318

Dakota Lanning
7th Grade



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 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.5

The Texas Funeral Service Commission ("Commission") adopts new §201.5, concerning Executive Director without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5035).

The new rule will allow for continuity in the management of Commission affairs.

No comments were received regarding the proposed new rule.

The new rule is adopted under Texas Occupations Code, §651.152. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2014.

TRD-201404368
Janice McCoy
Executive Director
Texas Funeral Service Commission
Effective date: October 2, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 936-2469

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.26, §203.27

The Texas Funeral Service Commission ("Commission") adopts amendments to §203.26, concerning Funeral Directors and Embalmers License Requirements and Procedure, and new §203.27, concerning Military Licensing, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5036).

The amended and new rules are in response to changes made to Chapter 55, Texas Occupations Code, during the 83rd Legislative Session.

No comments were received regarding the proposed amendments and new rules.

The new rule and amendments are adopted under Texas Occupations Code, §651.152. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Janice McCoy
Executive Director
Texas Funeral Service Commission
Effective date: October 2, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 936-2469

PART 11. TEXAS BOARD OF NURSING

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.5

Introduction. The Texas Board of Nursing (Board) adopts amendments to §215.5, concerning Philosophy/Mission and Objectives/Outcomes. The amendments are adopted without changes to the proposed text published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6007) and will not be republished.

Reasoned Justification. The amendment is adopted under the authority of the Occupations Code §301.157 and §301.151 and is necessary to correct a typographical error in the title of the Differentiated Essential Competencies of Graduates of Texas Nursing Programs (DECs).

How the Sections Will Function.

Adopted §215.5(b) correctly references the "Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010 (DECs)".

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendment is adopted under the Occupations Code §301.157 (relevant subsections) and §301.151.

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.157(d) provides that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (1) is approved by the Board; (2) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board, subject to Subsection (d-4).

Section 301.157(d-4) states that the Board may recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (1) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (2) require the approval process identified under Subdivision (1) to precede the approval process conducted by the Board; and (3) be made available on the Board's Internet website and in a written form.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2014.

TRD-201404311
Jena Abel
Assistant General Counsel
Texas Board of Nursing
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Proposal publication date: August 8, 2014
For further information, please call: (512) 305-6822

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.1, concerning Definitions. The amendments are adopted without changes to the proposed text published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6008) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.002(2) and (5), 301.261(e), and 301.151 and are necessary to eliminate obsolete provisions from the rule and update references to the "Texas Board of Nursing". The definition of "professional nursing practice" in current §217.1(31) and "vocational nursing practice" in current §217.1(50) contains a reference to "compensation". However, the reference to "compensation" was removed from the definition of "professional nursing" in the Nursing Practice Act (NPA) in 2005 (See SB 1000 (79th R.S.), effective May 20, 2005). The definition of "vocational nursing" was also amended by SB 1000 in 2005 and does not include a reference to "compensation". Further, the definition of "registered nurse, retired"

in current §217.1(37) and "vocational nurse, retired" in current §217.(47) includes a reference to age 65 or older. However, the NPA eliminated age restrictions for retired status in 2011 (See SB 193 (82nd R.S.), effective September 1, 2011). The adopted amendments are necessary for consistency with the updated provisions of the NPA.

How the Sections Will Function.

Adopted §217.1(6) correctly references the "Texas Board of Nursing".

Adopted §217.1(27) eliminates an outdated reference to the Board of Nurse Examiners for the State of Texas.

Adopted §217.1(31) eliminates reference to "compensation" and includes citation to the definition of professional nursing, as found in the Occupations Code §301.002(2).

Adopted §217.1(37) eliminates the reference to age 65 or older and corrects typographical errors in the paragraph.

Adopted §217.1(47) eliminates the reference to age 65 or older and corrects typographical errors in the paragraph.

Adopted §217.1(50) eliminates reference to "compensation" and includes citation to the definition of vocational nursing, as found in the Occupations Code §301.002(5).

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.002(2) and (5), 301.261(e), and 301.151.

Section 301.002(2) defines "professional nursing" as the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves: (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes; (B) the maintenance of health or prevention of illness; (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist; (D) the supervision or teaching of nursing; (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures; (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; (G) the performance of an act delegated by a physician under §§157.0512, 157.054, 157.058, or 157.059; and (H) the development of the nursing care plan.

Section 301.002(5) defines "vocational nursing" as a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Vocational nursing involves: (A) collecting data and performing focused nursing assessments of the health status of an individual; (B) participating in the planning of the nursing care needs of an individual; (C) participating in the development and modification of the nursing care plan; (D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual; (E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and (F) engaging in other acts that require education and training, as prescribed by board rules and policies, commensurate with the nurse's experience, continuing education, and demonstrated competency.

Section 301.261(e) provides that the Board, by rule, shall permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the Board.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The 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-201404310
Jena Abel
Assistant General Counsel
Texas Board of Nursing
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Proposal publication date: August 8, 2014
For further information, please call: (512) 305-6822

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 TAC §223.1, concerning Fees. The amendments are adopted without changes to the proposed text published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6010) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.155 and §301.151 and eliminate unnecessary and obsolete provisions from the rule text. Although the Board continues to print replacement "wall" certificates, the Board no longer issues duplicate or substitute licenses, as licensees are now able to print licensure verification and copies directly from the Board's website. Further, the Board no longer utilizes docketing fees in non-disciplinary matters. As such, the adopted amendments remove these provisions from the rule text and re-number the remaining provisions accordingly.

How the Sections Will Function. The adopted amendments eliminate the fees for duplicate or substitute licenses and docketing fees in non disciplinary matters from the rule. The remaining adopted amendments re-number the paragraphs of the section appropriately.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.155 and §301.151.

Section 301.155(a) provides that, the Board, by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2014.

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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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Proposal publication date: August 8, 2014
For further information, please call: (512) 305-6822

PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.1, 821.2, 821.4, 821.5, 821.9, 821.10, 821.13, 821.16, 821.17, 821.20, 821.30, 821.31

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1, 821.2, 821.4, 821.5, 821.9, 821.10, 821.13, 821.16, 821.17, and 821.20 and new §821.30 and §821.31, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities. The amendment to §821.10 is adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5284). The amendments to §§821.1, 821.2, 821.4, 821.5, 821.9, 821.13, 821.16, 821.17, and 821.20 and new §821.30 and §821.31 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The adopted rules provide for jurisprudence examinations and criminal history evaluation letters; the rules also clarify student residency requirements. The rules modify the board executive director's authority regarding closure of certain complaints.

In accordance with House Bill 2703, 82nd Legislature, Regular Session, 2011, the amendments and new rules expand the type of individuals authorized to issue an order for orthotics and prosthetics.

The rules also set out new requirements and an associated fee for the issuance of criminal history evaluation letters, in accordance with Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, as required by House Bill 963, 81st Legislature, Regular Session, 2009.

The rules also set forth alternative licensure requirement procedures for military spouses, as mandated by Senate Bill 1733, 82nd Legislature, Regular Session, 2011, and codified in the Occupations Code, Chapter 55. The new provisions include rules mandated by Senate Bill 162 and House Bill 2254, 83rd Legislature, Regular Session, 2013 relating to the occupational licensing for military spouses. The rules also allow verified military service members and military veterans credit of verified military service, training or education towards licensing, registration and apprenticeship requirements if the military service, training or education is relevant to the occupation.

The amendments result in part from statutory changes made during the 83rd Legislature, Regular Session, 2013, by the passage of Senate Bill 141 (SB 141), codified in the Occupations Code, Chapter 605. As a result of this legislation, the rules set forth a requirement of SB 141: clinical residency programs must be equivalent to or exceed National Commission on Orthotic and Prosthetic Education (NCOPE) standards. The passage of SB 141 also allows the issuance of a student registration certificate under additional circumstances than those contained in current rules, as reflected in the amendments.

The rules are authorized by Occupations Code, Chapter 605, relating to the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities, Occupations Code, Chapter 53, regarding consequences of a criminal conviction and Occupations Code, Chapter 55, regarding license for a military service member or military spouse.

SECTION-BY-SECTION SUMMARY

The amendment to §821.1 expands the content covered by the Texas Board of Orthotics and Prosthetics rules, at 22 TAC Chapter 821, by adding criminal history evaluation letters, as required by House Bill 963, 81st Legislature, Regular Session, 2009; the amendment also adds alternative licensing requirements for military service members, military veterans and military spouses.

Amendments to §821.2 clarify and expand the definition of "assistant patient care service." Additionally, pursuant to House Bill 2703, 82nd Legislature, 2011, Regular Session, the definitions of "orthotics" and "prosthetics" are amended to reflect the additional practitioners who can provide these services. Finally, the amendment to §821.2 adds "NCOPE" to this section and renumbers the remaining definitions accordingly.

The amendment to §821.4 establishes a $50 fee for the issuance of a criminal history evaluation letter, as permitted by House Bill 963, 81st Legislature, 2009, Regular Session.

Amendments to §821.5 set forth requirements regarding the jurisprudence examination, a test all licensure applicants must complete as a requirement for licensure; this amendment also requires current licensees complete the jurisprudence examination once every other two-year license renewal period as a part of their licensure requirements.

The amendments to §821.9 reference the new requirements for academic degree and clinical residency to conform to statutory requirements of Senate Bill 141, made during the 83rd Legislature, Regular Session, 2013.

The amendments to §821.10 as adopted delete proposed provisions which previously conflicted with other existing law. The amendments also remove unnecessary or duplicative language while providing clarification and consistency. Additionally, the amendments to this section correct the name of the regional accrediting body.

The amendment to §821.13 extends the circumstances under which students who are enrolled in orthotic and prosthetic graduate programs may be granted student registration.

The amendments to §821.16 specify that the board will only accept a professional clinical residency if the residency meets NCOPE standards, conforming to statutory requirements of Senate Bill 141, passed in the 83rd Legislature, Regular Session, 2013.

Amendments to §821.17 require each licensee complete the jurisprudence examination every other license renewal period.

The amendment to §821.20 modifies the authority of the board's executive director regarding the closure of complaints.

New §821.30 establishes the procedures for the issuance of criminal history evaluation letters as required by House Bill 963, 81st Legislature, 2009, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

New §821.31 establishes alternative licensure requirement procedures for military service members, military veterans, and military spouses.

COMMENTS

The board has reviewed and accepted the comments received regarding the proposed rules during the comment period. The commenters were individuals, associations, and/or groups, including the following: the Texas Medical Association, the Texas Orthopaedic Association and three individuals. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Three commenters provided comments in favor of the rules as proposed.

Comment: Concerning new proposed language at §821.10(b)(1) related to allowing a licensed physician to supervise a licensed assistant, two commenters oppose the proposed change which would have allowed the board to discipline a supervising licensed physician based on acts or omissions by a licensed assistant under his/her supervision. The comment asserted that the proposed rule exceeds the board's legal authority to impose a disciplinary action, since a licensed physician is not licensed by the board.

Response: The board agrees with the commenter and has entirely removed the proposed change which would have allowed a licensed physician to supervise a licensed assistant.

Comment: One commenter requested that the board consider rule changes which would require the posting of an assistant's license in each practice location in addition to the requirements of §821.55, Consumer Notification.

Response: The board appreciates the comment and has referred the proposed new language to the board's Rules Committee to consider the suggestion during future rulemaking. No change was made as a result of the comment.

Comment: Concerning §821.10(b)(1) and (2), one commenter stated that the section uses inconsistent language and suggested consistency.

Response: The board added the phrase "(relating to Definitions)" to §821.10(b)(1) and has removed the phrase "(relating to Definitions)" in §821.10(b)(2). The board has considered the sections and finds that any remaining differences in language between §821.10(b)(1) and §821.10(b)(2) are intentional.

Comment: Concerning §821.10(b)(1), one commenter requested that the board add new language to limit the scope of what a Licensed Assistant can do in the office of a physician as opposed to under the supervision of a Licensed Orthotist.

Response: The board appreciates the comment; however, the board has removed the proposed change which would have allowed a licensed physician to supervise a licensed assistant. No change was made as a result of the comment.

STATUTORY AUTHORITY

The amendments and new rules are adopted under Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

§821.10. Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

(a) Purpose. The purpose of this section is to establish the scope of practice and the qualifications for licensure for a licensed assistant under the Orthotics and Prosthetics Act (Act), §605.255.

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services and assistant patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the immediate supervision of a licensed orthotist or a licensed prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed orthotist or supervising licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the immediate supervision of a licensed prosthetist or licensed prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed prosthetist or

licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(3) A licensed prosthetist/orthotist assistant performs the type of work described in both paragraphs (1) and (2) of this subsection and is subject to the supervision requirements described there.

(4) Assistants may only practice in a facility accredited under §821.15 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities), or a facility that is exempt under the Act, §605.260(e).

(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) successful completion of coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools that included at a minimum:

(A) six credit hours of anatomy and physiology;

(B) three credit hours of algebra or higher mathematics;

(C) three credit hours of physics or chemistry; and

(2) a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, completed in a period of not more than six consecutive months, in a facility that is accredited under §821.15 of this title or a facility that is exempt under the Act, §605.260(e). The resident shall practice under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic and/or orthotic facility or its patients or clients.

(B) The clinical residency shall include observation of assistant level work covering assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, depending on the type of residency.

(C) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist.

(D) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(E) The clinical resident may only be incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(d) Beginning and ending a clinical residency for an assistant. Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the board by filing a completed supervision agreement with the board on a form prescribed by the board. The supervisor shall provide the clinical resident and the board with written documentation upon beginning, terminating or completing a clinical residency. If terminating or completing a residency, the written documentation shall indicate the number of hours, which comply with this section that were completed by the clinical resident.

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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Rebecca Brou
Presiding Officer
Texas Board of Orthotics and Prosthetics
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For further information, please call: (512) 776-6972

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 1. GASOLINE VOLATILITY

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§114.301, 114.306, 114.307, and 114.309 and the repeal of §114.304 *without changes* to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2753).

The repeal of §114.304, and amended §114.307 and §114.309, will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The current state regulations for the Regional Low Reid Vapor Pressure (RVP) Gasoline Program, as specified under the Chapter 114 gasoline volatility rules in §114.301, prohibit the sale of all gasoline from gasoline-dispensing facilities that has a RVP greater than 7.8 pounds per square inch (psi) within the 95 central and eastern Texas counties affected by these regulations from June 1 through October 1 of each year. This prohibition applies to all other affected entities in the affected 95 counties from May 1 through October 1 of each year. Low RVP gasoline is refined to have a lower evaporation rate and lower volatility than conventional gasoline. Low RVP gasoline reduces the evaporative emissions generated during vehicle refueling and therefore decreases the emissions of volatile organic compounds (VOC) and other ozone-forming emissions. Reducing emissions of VOC benefits the regional 95-county area and the rest of the state and assists in the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone. These rules also prohibit the increased use of methyl-tertiary-butyl-ether (MTBE) in gasoline to comply with the low RVP gasoline requirements during the period of May 1

through October 1 each year over that used in the period of May 1, through October 1, 1998, on an average per gallon basis.

The Regional Low RVP Gasoline Program rules, as specified in §114.304, also require all gasoline producers and importers that supply gasoline to the affected counties to register with the TCEQ. In addition, all registered gasoline producers and importers are required, as specified in §114.306, to submit an annual report certifying that the use of MTBE in the gasoline supplied to the affected counties, from May 1, through October 1, of the current reporting year, has not increased on an average per gallon basis from that used during the period of May 1, through October 1, 1998.

The following 95 Texas counties, as specified in §114.309, are affected by the Regional Low RVP Gasoline Program regulations: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

The use of MTBE as an oxygenate for compliance with federal reformulated gasoline (RFG) regulations and as a gasoline octane-enhancing additive was common when the Regional Low RVP Gasoline Program regulations in Chapter 114 were originally adopted in June 1999. Concerns over the potential MTBE contamination of groundwater and surface water led the commission to adopt the MTBE prohibition specified in §114.301(c) in April 2000 to prevent gasoline producers from increasing the use of MTBE in gasoline to conform to the low RVP requirements. The gasoline producer and importer registration requirements in §114.304 and the annual reporting requirements specified in §114.306(c) were also adopted in April 2000 to enhance the enforceability of the MTBE prohibition specified in §114.301(c). The EPA approved the Low RVP Gasoline Program rules in Chapter 114 as a SIP control strategy for the one-hour ozone NAAQS in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas in the April 26, 2001, issue of the *Federal Register* (66 FR 20927).

Subsequently, with the passage of the Energy Policy Act in 2005, the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed and a new federal renewable fuel standard requiring the use of ethanol in gasoline was enacted. As a result, gasoline producers began to blend ethanol into gasoline to meet the new federal renewable fuel standard, and MTBE was effectively removed from general use as a gasoline additive by the gasoline refining industry, primarily due to growing concerns over the MTBE contamination of groundwater and surface water. Samples of gasoline collected statewide in 2011 for a summer fuel field study conducted by the TCEQ showed only trace amounts of MTBE in some samples, i.e., less than 0.1% by volume, while every gasoline sample collected contained ethanol ranging from 1.99% to 9.44% by volume.

The adopted amendments to the Regional Low RVP Gasoline Program rules will remove obsolete requirements that provide no benefit to the state and are no longer necessary for the implementation and enforcement of the primary gasoline volatility control requirements of the rule. In addition, the adoption will provide regulatory consistency between the Chapter 114 gasoline volatility requirements and the El Paso Low RVP Gasoline requirements, specified in the 30 TAC Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not prohibit the use of MTBE and do not require registration and annual reporting.

Section 110(l) Anti-backsliding Demonstration

The adopted amendments to the Regional Low RVP Gasoline Program rules are also adopted as revisions to the Texas SIP. The EPA approved the Regional Low RVP Gasoline Program rules effective May 29, 2001, but specifically did not address the MTBE prohibition requirement of the Regional Low RVP Gasoline Program rules since the commission did not submit that requirement as a SIP revision. The EPA generally approved the registration and recordkeeping and certification requirements. Federal Clean Air Act (FCAA), §110(l) requires that the EPA not approve revisions to the SIP, if the revision will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the FCAA. The commission has reviewed the adopted amendments to the Regional Low RVP Gasoline Program rules and determined that the amendments will not interfere with attainment or maintenance of the one-hour ozone NAAQS, since the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed in 2005. Additionally, MTBE has effectively been replaced with ethanol as a gasoline additive by the gasoline refining industry due to concerns with water contamination and for compliance with federal renewable fuel requirements. The repeal of the registration requirements, which were originally adopted to enhance enforcement regarding the MTBE prohibition, is not expected to impact the purpose of the Regional Low RVP Gasoline Program since those rules remain intact. Similarly, the adopted amendments to §§114.306, 114.307, and 114.309 involve minor administrative clarifications necessary for consistency. The Regional Low RVP Gasoline Program rules remain in place as an effective means to provide continued emissions reductions of VOC to assist in attainment and maintenance of the one-hour ozone NAAQS primarily within the 95-county region where the rules apply but also having potential additional benefits throughout the state.

Section by Section Discussion

§114.301, Control Requirements for Reid Vapor Pressure

The adoption will amend §114.301 to delete subsection (c) to remove the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements specified in subsection (a). The prohibition on increased use of MTBE is no longer necessary since the federal regulations requiring the use of oxygenates, such as MTBE, in RFG was repealed in 2005. Also, MTBE has effectively been replaced with ethanol as a gasoline additive by the gasoline refining industry, due to concerns with water contamination and for compliance with federal renewable fuel requirements. In addition, the adopted amendment will provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in the Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain a prohibition on the increased use of MTBE to comply with the rules.

§114.304, Registration of Gasoline Producers and Importers

The adoption will repeal §114.304 to remove the requirement for gasoline producers and importers that supply gasoline to the affected counties to register with the TCEQ for consistency with the adopted changes to §114.301, since these requirements were adopted by the commission in April 2000 to enhance the enforceability of the MTBE prohibition specified in §114.301(c). Repealing the registration requirements specified in this section will relieve gasoline producers and importers affected by these regulations from an administrative requirement that is no longer necessary for the implementation of the low RVP gasoline rules. Repealing this section will also provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain registration requirements.

§114.306, Recordkeeping, Reporting, and Certification Requirements

The adoption will amend §114.306 to delete subsection (c) to remove the reporting and certification requirements regarding the annual report on the use of MTBE in the gasoline, as needed for consistency with the adopted changes to §114.301. Removing the reporting and certification requirements specified in this subsection will relieve gasoline producers affected by these regulations from an administrative requirement that is no longer necessary for the implementation of the Chapter 114 low RVP gasoline rules. In addition, removing this subsection will provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in the Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain reporting requirements. The adoption will also amend §114.306 to make clarifying changes to the section heading as needed for accuracy and consistency with the adopted changes to the section.

§114.307, Exemptions

The adoption will amend §114.307 to make non-substantive clarifying changes as needed for accuracy and consistency with the adopted changes to §114.306.

§114.309, Affected Counties

The adoption will amend §114.309 to make non-substantive clarifying changes as needed for accuracy and consistency with the adopted changes to §114.306.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking will amend §§114.301, 114.306, 114.307, and 114.309; and will repeal §114.304. The revisions to Chapter 114 will remove the existing prohibition on the increased use of MTBE in gasoline and the registration and reporting requirements that have become effectively obsolete due to the passing of the Energy Policy Act in 2005, which effectuated a phase-out of the use of MTBE as a oxygenate for low RVP fuel. Requiring gasoline producers to register, document, and report use of MTBE is no longer necessary. While the adopted rulemaking addresses revisions to the low emission fuels requirements associated with gasoline volatility that are specifically intended to protect the environment or reduce risks to human health from environmental exposure, the adopted rulemaking is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the revisions are to address federal requirements associated with the phase-out of the use of MTBE as an oxygenate for low RVP fuel.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement will seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that will require assessment un-

der the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule will require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of these rules is to remove the existing prohibition on the increased use of MTBE in gasoline, which has effectively been ended by the Energy Policy Act of 2005, and address other administrative requirements for consistency. Requiring gasoline producers to register, document, and report use of MTBE is therefore simply no longer necessary. As discussed elsewhere in this preamble, the amendments to §§114.301, 114.306, 114.307 and 114.309, and the repeal of §114.304, amount to an administrative clean-up to remove outdated and no longer necessary rules and requirements. Additionally, even if the adopted rulemaking was a major environmental rule, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because the adopted rulemaking does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but no comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to remove outdated and obsolete portions of the low RVP fuel standards. The adopted rules will substantially advance this stated purpose by: removing the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements; removing the registration requirements for gasoline producers and importers that supply low RVP gasoline to the affected counties; removing the annual reporting and certification requirements on the use of MTBE in low RVP gasoline; and by making other non-substantive clarifying changes as needed for accuracy and consistency.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. With the passage of the Energy Policy Act in 2005, the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed and a new federal renewable fuel standard requiring the use of ethanol in gasoline was enacted. As a result, gasoline producers began to blend ethanol into gasoline to meet the new federal renewable fuel standard, and MTBE was effectively removed from general use as a gasoline additive by the gasoline refining industry. The adopted rules constitute an "action reasonably taken" to provide administrative conformity with the Energy Policy Act's repeal of the requirements for the use of oxygenates in fuel, as the adopted rules will simply do away with reporting and registration requirements that are no longer necessary due the passage of the Energy Policy Act in 2005. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. These adopted rules will simply remove obsolete requirements that provide no benefit to the state and are no

longer necessary for the implementation and enforcement of the primary gasoline volatility control requirements of the rule.

In addition, because the subject adopted regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. 31 TAC §505.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the revisions are consistent with CMP goals and policies because the adopted rulemaking is to remove outdated and obsolete portions of the low RVP fuel standards; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the revisions will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period, but no comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 114 does not contain applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the Federal Operating Permits Program will not be required to revise their operating permits, consistent with the revision process in Chapter 122, to include the revised Chapter 114 requirements for each emission unit at their sites affected by the revisions to Chapter 114.

Public Comment

The commission offered a public hearing on May 8, 2014, in Austin, Texas. The hearing was not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the Texas Food and Fuel Association (TFFA) and the Texas Oil and Gas Association (TXOGA). Both commenters were in support of the rule changes.

Response to Comments

TFFA commented that it supports the changes to the rules. TXOGA commented that it supports the revisions to the rules removing obsolete requirements that provide no benefit to the state and are unnecessary to regulation of the primary gasoline volatility control requirements of the rule.

The commission appreciates the support.

30 TAC §§114.301, 114.306, 114.307, 114.309

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, concerning Rules and General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §28.011, concerning Underground Water: Regulations, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2014.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: April 11, 2014
For further information, please call: (512) 239-2141

30 TAC §114.304

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103 and §5.105, concerning Rules and General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §28.011, concerning Underground Water: Regulations, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. The repeal is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air;

THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

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 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229.

Sections 115.10, 115.226, and 115.227 are adopted *with changes* to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2760). Sections 115.221, 115.222, 115.224, 115.225, and 115.229 are adopted *without changes* to the proposed text and, therefore, will not be republished.

The adopted amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Stage I vapor recovery for filling of gasoline storage tanks at gasoline dispensing facilities (GDF) is a reasonably available control technology (RACT) requirement for ozone nonattainment areas required under §182 of the Federal Clean Air Act (FCAA) and the Control Techniques Guideline documents for RACT issued by the EPA. The commission's Stage I rules are included in Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities. In addition to fulfilling FCAA RACT requirements for nonattainment areas, the commission adopted rule revisions to the Chapter 115 Stage I rules in 1999 implementing the Stage I vapor recovery option of the Texas Clean Air Strategy (TCAS) for certain ozone attainment counties. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the National Ambient Air Quality Standard (NAAQS) for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards. It was also to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

The effectiveness of Stage I vapor recovery rules relies on the captured vapors being effectively contained within the gasoline tank truck during transit and controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the GDF will simply be emitted during transit or when the transport vessel is refilled, resulting in no reduction in volatile organic compound (VOC) emissions despite the Stage I requirements.

The Stage I vapor recovery rules apply to GDFs that have installed Stage II vapor recovery equipment in the Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). The Beaumont-Port Arthur Area (Hardin, Jefferson, and Orange Counties), and El Paso County, which is under an ozone nonattainment maintenance plan as part of the 1997 eight-hour ozone standard, are also subject to the Stage I vapor recovery requirements. These rules regulate the filling of gasoline storage tanks at GDFs by tank trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks that will otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank truck, and the vapors are processed by a vapor control system when the tank truck is subsequently refilled at a gasoline terminal or gasoline bulk plant.

Initially, the 1999 amendments to Chapter 115 extended the existing Chapter 115 Stage I vapor recovery and gasoline tank truck leak testing requirements to 95 counties in the eastern half of Texas. These counties included: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. Ellis, Johnson, Kaufman, Parker, and Rockwall Counties were subsequently designated nonattainment for the 1997 eight-hour ozone standard on June 15, 2004, and the Stage I rules were revised to include these counties under the ozone nonattainment area requirements through rulemaking adopted on April 13, 2005. Wise County in the Dallas-Fort Worth area has been designated as nonattainment for the 2008 eight-hour ozone standard but has not been included in this rule revision as a county in which Stage I applies. The executive director has approved initiation of a future rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements, including Stage I requirements, for Wise County that are necessary as a result of the designation. These rules are tentatively scheduled for proposal in December 2014.

In 2012, the EPA finalized a rulemaking published in the May 16, 2012, issue of the *Federal Register* (77 FR 28772) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle on-board refueling vapor recovery (ORVR) technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, on October 9, 2013, the commission adopted revisions to the Chapter 115 Stage II rules (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project Number 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs no later than August 31, 2018, in ozone nonattainment areas classified as serious and above. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I petroleum storage tanks' (PST) vapor recovery system. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs will no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment counties from the Stage II rules, the commission is adopting revisions to the Stage I testing requirements.

Upon the adoption of Stage II decommissioning requirements, a review was done on the Stage I testing requirements that facilities in ozone nonattainment areas will have to comply with once Stage II vapor recovery equipment has been decommissioned. The commission determined that additional revisions related to testing requirements were necessary to improve clarity and consistency in compliance and program administration for the affected industry and the agency. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will eliminate confusion concerning testing requirements within the industry by improving consistency between the state Stage I rules in Chapter 115 and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Stage I rules. The commission incorporated the NESHAP Stage I rules by reference in 30 TAC §113.1380 on July 26, 2013. The federal Stage I rules require GDFs that have a monthly throughput at or above 100,000 gallons to operate a vapor balance system to capture and return vapors to the tank-truck tank so the vapors can be disposed of properly. GDFs subject to the federal Stage I rule must also meet certain testing and recordkeeping requirements.

The commission also held informal stakeholder meetings on potential revisions to the Stage I testing requirements on April 24, 2013 in Arlington, April 25, 2013 in Longview, April 29, 2013 in Corpus Christi, April 30, 2013 in Houston, May 1, 2013 in Austin, and May 2, 2013 in El Paso. Commenters present at these stakeholder meetings agreed that Stage I testing requirements needed to be uniform across the affected East Texas areas in the state and that federally required testing procedures and methods were generally accepted by the industry. Commenters also agreed that testing of Stage I equipment should be performed more frequently than once every three years to better detect potential issues with the system and improve compliance with testing requirements. Counties in West Texas will continue to comply with federal requirements only and will not be affected by this rulemaking.

The commission adopts these revisions to Chapter 115 to specify Stage I testing requirements for GDFs located in the 16 counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) that will be affected by the Stage II decommissioning rule revision, preserve existing Stage I testing requirements in the currently affected 95 counties, and establish testing requirements in Chapter 115 that are more consistent with the federal Stage I rule for all 254 counties.

Applicability of, and compliance with Stage I vapor recovery rules is dependent on the geographical location of the GDF within the state. GDFs within counties located in the eastern part of the state must comply with state requirements found in Chapter 115, Subchapter C, Division 2. The federal Stage I rule in 40 CFR Part 63, Subpart CCCCCC applies to all 254 counties; therefore, GDFs located within any county not covered by the Stage I requirements documented in Chapter 115, Subchapter C, Division 2 are covered under the federal Stage I requirements. The gallons of gasoline dispensed per month and the county where the GDF is located determines if the owner or operator of a GDF is required to install Stage I equipment and subject to either the state or federal Stage I regulations. Owners of GDFs with multiple locations throughout the state with similar monthly gasoline throughput amounts could be subject to different equipment and testing requirements depending on their geographical location.

Additionally, owners or operators of GDFs that have implemented Stage II in the 16 affected counties are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II decommissioning occurs at the GDF, which may result in decreased effectiveness of the Stage I equipment installed at these facilities. The owners or operators of GDFs in the remaining 90 counties in the eastern half of Texas and identified under the term covered attainment counties that fall under the state Stage I rule are only required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. All GDFs in the state subject to 40 CFR Part 63, Subpart CCCCCC must comply with the federal Stage I testing requirements and are required to perform the California Air Resource Board (CARB) Vapor Recovery Test Procedures TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure/vacuum (P/V) valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

Additionally, the adopted revisions will reduce the throughput level for exemption from Stage I implementation from 125,000 gallons per month to 100,000 gallons per month for GDFs in the 90 covered attainment counties, except for those covered attainment counties in the Austin/San Antonio area (Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson) that currently have an applicability threshold of 25,000 gallons per month. This adopted change will establish consistency with the NESHAP requirements and provide owners and operators of GDFs with clarity on compliance with equipment and testing requirements. The lowering of the throughput level is not anticipated to affect owners and operators of GDFs in the covered attainment counties because these facilities have already been subject to NESHAP requirements, which were incorporated by reference by the commission on July 26, 2013, or as is the case for those counties in the Austin/San Antonio area, are already subject to a state-required lower throughput.

The commission has also found that swivel-type of adapters that allows for the connection of hoses from the tank truck to the stationary tank and prevent over-tightening are readily in use by GDFs. These adapters are CARB certified and approved for use through the NESHAP rules. The commission has incorporated the use of approved adapters including swivel adapters in the Emissions Specifications section of the rule.

Section by Section Discussion

In addition to the adopted revisions regarding testing and other Stage I requirements discussed elsewhere in this preamble, various stylistic, non-substantive changes were included to update the rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These minor revisions include updating the formatting of geographic area terms used in the rules to be consistent with the formatting of the terms as defined in §115.10 (e.g., Beaumont-Port Arthur in lieu of Beaumont/Port Arthur). These changes are non-substantive and generally are not specifically discussed in this preamble.

Additionally, the commission replaces the term "motor vehicle fuel dispensing facility" in multiple portions of the Stage I rules with a new defined term "gasoline dispensing facility" for clarity and consistency with the terminology found in requirements for the Chapter 115 Stage II rules.

§115.10, Definitions

The commission adopts revisions to §115.10 by adding the definitions for "dual-point vapor balance system," "coaxial system," and "gasoline dispensing facility." The term "dual-point vapor balance system" is incorporated from 40 CFR §63.11132 to describe a type of system that should be installed at a facility. A dual-point vapor balance system allows for separate connections for the loading of gasoline and the transfer of gasoline vapors to a tank-truck tank. The term "coaxial system" is added to describe a type of vapor control system consisting of a tube within a tube that requires only one tank opening allowing fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. This type of system is often found at GDFs. The term "gasoline dispensing facility" is added to replace the term "motor vehicle fuel dispensing facility" used in the Stage I rules for consistency with recent revisions to the Chapter 115 Stage II rules and defined for clarification. The definition for "pressure relief valve" is updated to also apply to "pressure-vacuum relief valves" to keep the wording within the rule consistent and with the general use of the term to cover relief valves by the industry. The other definitions in this section are re-numbered as needed.

Additionally, the commission had proposed to make a non-substantive revision to the definition of highly-reactive volatile organic compounds (HRVOC) by adding the word "emissions" in subparagraph (B). However, when used in Chapter 115, Subchapter H, the term HRVOC is not used exclusively in the context of emissions. The term HRVOC is also used in certain contexts concerning process fluids in vessels and piping, e.g., HRVOC content levels in process fluids for meeting exemption criteria. Including the word "emissions" in the definition in §115.10 could inadvertently create confusion in such contexts. Therefore, the commission is not adopting this proposed change.

§115.221, Emission Specifications

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.221 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

§115.222, Control Requirements

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.222 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

The adopted revisions to §115.222 also delete the language allowing facilities with a Stage II vapor recovery system to establish a pressure rate at which a pressure-vacuum relief valve is set that meets CARB requirements or has a third-party certification because the Stage II requirements will no longer be required due to the commission's adoption of the decommissioning of Stage II equipment. The adopted language incorporates the use of "dual-point vapor balance system" as defined in §115.10 and removes the language for non-coaxial Stage I connections. Dual-point vapor balance systems are more effective than single-point coaxial systems in controlling vapors during the loading of gasoline because two separate hoses for loading the fuel and recovering fuel vapors are connected to the delivery truck and storage tank which allow less back pressure and higher flow rates. Dual-point vapor balance systems are the only non-coaxial Stage I connection used in Texas and have been required at all applicable facilities since January 10, 2011.

Additionally, the information in paragraph (6) is incorporated into paragraph (5). After removal of the provision regarding Stage II, the requirements for covered attainment counties in paragraph (6) are identical to the requirements for ozone nonattainment areas under paragraph (5). Therefore, combining the two paragraphs will eliminate redundant rule language. The other paragraphs in this section are re-numbered as appropriate.

§115.224, Inspection Requirements

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.224 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, paragraph (1) is revised to specify that gasoline transfer must be discontinued immediately when any liquid leak, visible vapor, or significant odor is observed to prevent further potential discharges. This adopted revision will provide additional clarity within the rule language by providing more descriptive terms for the types of potential discharges that would result in a discontinuation of the transfer of gasoline.

§115.225, Testing Requirements

The commission adopts the amendment to §115.225 to remove the current test procedures and require all affected GDFs to comply with the requirements of 40 CFR §63.11120. All affected GDFs will be required to annually comply with the CARB Vapor Recovery Test Procedures, TP-201.1E and TP-201.3, found in 40 CFR §63.11120. Additionally, use of alternative test methods and procedures shall be allowed in accordance with the alternative test method requirements found in 40 CFR §63.7(f). These adopted revisions will make the testing requirements for affected East Texas facilities under Chapter 115 consistent with the federal Stage I rule except for the annual inspection requirement. This revision will minimize confusion within the industry

of which test is required in which area in East Texas, the frequency of the tests, and will provide for improved consistency in compliance and enforcement by the commission due to a more defined testing schedule and testing procedures. Owners and operators of GDFs in West Texas will continue to comply with federal requirements and would not be affected by this rulemaking. The CARB Vapor Recovery Test Procedure-201.1E will be required for GDFs to demonstrate compliance with the leak rate and cracking pressure requirements for pressure-vacuum vent valves installed on the gasoline tanks at the facility. The CARB Vapor Recovery Test Procedure-201.3 will be required to demonstrate compliance with the static pressure performance requirement for a vapor balance system by conducting a static pressure test on the gasoline tanks at the facility. Annual testing of Stage I systems will provide additional benefit to the industry by identifying issues sooner and addressing expensive repair costs experienced by systems that are not tested annually where faulty equipment and parts are allowed to operate for longer periods of time. Affected areas will also benefit by having emissions issues at these facilities addressed earlier resulting in minimal impact to the environment.

§115.226, Recordkeeping Requirements

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.226 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the adopted revisions revise the provision in the introduction of §115.226 to clarify the records that shall be maintained and to specify that all records must be made available at the site during an investigation upon request.

The adopted revisions to §115.226(2)(B) also delete the language requiring facilities with Stage II vapor recovery systems to perform Stage I testing because the requirements would no longer be necessary due to the commission's adoption of the decommissioning of Stage II equipment as previously discussed in this preamble. The commission combines subparagraphs (B) and (C) to reflect that the recordkeeping requirements will become uniform in the counties listed as the Stage II vapor control requirements are repealed. The requirement to keep the records for gasoline throughput for each calendar month is updated to clarify that the records shall be kept for the previous 24 months.

§115.227, Exemptions

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.227 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. Additionally, the adopted revisions reorder provisions that cross-reference to §115.222 to reflect the proper order of the provisions in that section and update the cross-references to reflect changes to §§115.222, 115.224, and 115.226 adopted in this rulemaking.

The adopted revisions to §115.227 reduce the throughput level for exemption from Stage I vapor control requirements from 125,000 gallons per month to 100,000 gallons per month in paragraph (3) to provide GDF owners and operators with clearer applicability requirements and ensure consistency with throughput limits between the state and the federal Stage I requirements. The lowering of the throughput limit in this adopted rulemaking will provide owners and operators with one standard of throughput for both state and federal Stage I requirements in the majority of the covered attainment counties. The adopted revision will also provide the commission with one throughput standard for assessing applicability and compliance of GDFs in the covered attainment counties that currently have an applicability threshold of 125,000 gallons per month under the Chapter 115 rule. The adopted revisions to §115.227 also update the date in paragraph (3) to reflect that the exemption from the requirements of this division begin after October 31, 2014.

§115.229, Counties and Compliance Schedules

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.229 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the commission adopts the revisions to the list of counties in subsection (a) using the geographic area terms for the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas to be consistent with the other sections of the Stage I rules.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rules do not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking amends §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229. The revisions to Chapter 115 will facilitate compliance with agency rules and testing requirements that have changed due to changes to the Stage II vapor recovery program. These changes occurred after the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register,* 77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the vapor recovery Stage I PSTs. With the decom-

missioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment and ozone maintenance counties, the commission is adopting revisions to the Stage I testing requirements. The revisions to Chapter 115 will facilitate compliance with these testing requirements by making the requirements consistent across this sector of the industry. As a result, compliance with the rules will be easier and more consistent. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will also eliminate confusion with testing requirements by members of the industry by improving consistency between the state and federal Stage I rules.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The purpose of this rulemaking is to increase protection of the environment and reduce risk to human health; it is not expected that this adopted rulemaking would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

This rulemaking will allow the commission to make uniform Stage I testing requirements within the state program areas or between the state and federal program. Currently, owners or operators of GDFs in the 16 counties that have implemented Stage II are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II decommissioning occurs at GDFs, which may result in decreased effectiveness of the Stage I equipment installed at these facilities. The owners or operators of GDFs in the 95 counties that do not have Stage II, but fall under the state Stage I rule, are required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. The remaining 143 counties must comply with the federal Stage I testing requirements and are required to perform the CARB Vapor Recovery Test Procedures, TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the P/V valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP revision would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP revision will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617

(Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied).* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment on the draft regulatory impact analysis determination. The Texas Food and Fuels Association (TFFA) indicated that they have no comment on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to specify Stage I testing requirements for GDFs located in the 16 counties that will be affected by the Stage II rule revision (decommissioning Rule Project Number 2013-001-115-AI), preserve existing Stage I testing requirements in currently affected counties, and establish testing requirements that are uniform throughout the state.

As mentioned previously in the preamble, in 1999 the commission adopted rule revisions to Chapter 115 implementing the Stage I vapor recovery option of the TCAS. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the NAAQS for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards and to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

On May 16, 2012, the EPA finalized a rulemaking for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I PST vapor recovery. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply due to these testing requirements residing within the Stage II control regulations. In order to preserve existing Stage I testing requirements in ozone nonattainment counties, the commission is adopting revisions to the Stage I testing requirements.

This rulemaking is necessary to ensure that Stage I equipment is functioning properly and to be consistent with the federal rule revision authorizing the decommissioning of Stage II requirements. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to rulemakings that are actions reasonably taken to fulfill an obligation mandated by federal law. Since this rulemaking is such an action, Texas Government Code, Chapter 2007 does not apply.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking.

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. Therefore, Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (or §505.11(b)(4), whichever is applicable) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. Section 505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

No comments were received regarding the consistency with the CMP during the public comment period.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the adopted Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

Public Comment

The commission scheduled public hearings in Fort Worth on April 29, 2014, in Austin on May 1, 2014, and in Houston on May 6, 2014. The hearings were not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the EPA and the TFFA.

The EPA and the TFFA expressed overall support for the proposed rulemaking change. Changes to the rule were suggested by the TFFA.

Response to Comments

Comment

The EPA expressed appreciation of the rule revision for re-establishing and strengthening the test procedures for petroleum storage tanks and for making the Texas rules consistent with the NESHAP for Stage I in 40 CFR Part 63, Subpart CCCCCC.

Response

The commission appreciates the EPA's support and will continue to work with the EPA in the future. No change to the rule has been made in response to this comment.

Comment

The EPA expressed concern that the rule revision does not account for the designation of Wise County as nonattainment within the Dallas-Fort Worth ozone nonattainment area under the 2008 eight-hour ozone standard.

Response

The commission appreciates the EPA's concern that the changes proposed for this revised rule did not include applicability in Wise County. As stated in the proposal preamble of this rulemaking and reiterated in this adoption preamble, Wise County in the Dallas-Fort Worth area has been designated nonattainment for the 2008 eight-hour ozone standard. The Executive Director has approved initiation of a separate rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements including Stage I requirements for Wise County that are necessary as a result of the nonattainment designation. The commission has determined that including all applicable RACT requirements for Wise County in one rulemaking would provide the best notice to the public of additional requirements in Wise County due to its inclusion in the Dallas-Fort Worth nonattainment area for the 2008 eight-hour ozone standard. There is no anticipated impact on the proposed revisions in this current rulemaking as a result of the future Rule Project No. 2013-048-115-AI. In addition, this current rulemaking will be adopted before the Dallas-Fort Worth RACT rulemaking, which is tentatively scheduled for proposal in December 2014. No change to the rule has been made in response to this comment.

Comment

The EPA commented that there is a non-substantive variation between the proposed revisions to the first sentence of §115.10(11) submitted to the EPA in letter form and those posted on the TCEQ website.

Response

The commission appreciates the EPA's mention of the non-substantive difference between the versions regarding proposed revisions to §115.10(11). To comply with *Texas Register* formatting, a non-substantive editorial change was made to ensure that the correct citation was referenced before publication. This change did not modify the applicability of the definition. No change to the rule has been made in response to this comment.

Comment

The TFFA expressed support for most aspects of the rule revisions, specifically §§115.10, 115.221, 115.222, and 115.224.

Response

The commission appreciates the TFFA's support and will continue to work with all stakeholders to ensure successful implementation. No change to the rule has been made in response to this comment.

Comment

The TFFA commented that it is generally supportive of the change to the federally required test method in §115.225 for testing consistency and ease of compliance issues; however, it questions the benefits as outlined in the preamble. The TFFA's historic concerns have centered on the SIP benefit and the credit the state or nonattainment counties are receiving by expanding the control measure outside of the nonattainment areas. The TFFA expressed that its concern was more about what is not being said in the preamble than the characterization of the benefit to the industry.

Response

The commission appreciates the TFFA's concern regarding testing requirements found in §115.225. As stated in the preamble, this revision will minimize confusion within the industry regarding the type of test required in different geographical areas of East Texas and the frequency of the tests. The revision would also provide consistency in compliance and enforcement activities by the commission by more clearly defining the testing schedule and testing procedures. The improvement of consistency in compliance requirements is a benefit for the state and affected stakeholders and strengthens the benefits of this clean air strategy included in the SIP. While TFFA did not specifically identify its concern regarding the benefits in the preamble beyond those associated with harmonizing testing requirements with the federal requirements, the air quality benefits discussed in the preamble were provided for historical reference only. The scope of this rulemaking is to address testing issues resulting from the decommissioning of Stage II and to establish testing requirements that are more consistent with federal Stage I testing in 40 CFR Part 63, Subpart CCCCCC. The commission will continue to work with stakeholders to ensure successful implementation of Stage I testing requirements. No changes to the rule have been made in response to this comment.

Comment

The TFFA commented that it does not support the proposed revisions to §115.226 that require records to be kept on site, nor does it support the current requirement to do so found in §115.226(2).

The TFFA urged the commission to remove the entire provision of §115.226(1) and requested that the commission not adopt the revision to §115.226(2)(B) requiring records to be immediately available on site. The TFFA stated that the commission has already adopted recordkeeping requirements that recognize that large volumes of records cannot be kept on site and that records must be made available upon request within 72 hours. The TFFA suggested that the commission follow the recordkeeping protocol established in 30 TAC §334.10. The TFFA also commented that the commission has placed an unjustified and expensive recordkeeping provision on the GDF because the same records are being kept by the owner or operator of the tank truck.

Response

The commission appreciates the TFFA's concern regarding recordkeeping requirements found in §115.226. Paragraph (1) specifies records that must be maintained at the facility site. Records required under paragraph (2) must be made available at the site during an inspection already applies to all the records required under §115.226(2) via subparagraph (C). The commission's intent with the change was to streamline rule language but retain this requirement because subparagraph (C) was proposed for deletion. The commission acknowledges that the proposed language may be confusing as to the records that shall be kept on site at the affected GDF. The commission did not intend to propose that any additional records be kept on site other than those records already required in current §115.226. The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site, instead clarifying that records must be provided on site during an inspection. The commission will continue to work with stakeholders to ensure successful implementation of Stage I recordkeeping requirements.

Comment

The TFAA indicated it has no comment on the Regulatory Impact Analysis (RIA). No other comments were received regarding the RIA.

Response

The commission acknowledges TFFA's mention of the RIA. No changes to the rule have been made in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The amendment is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendment is also adopted under FCAA, 42 USC, §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Background--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) Beaumont-Port Arthur area--Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Closed-vent system--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Coaxial system--A type of system consisting of a tube within a tube that requires only one tank opening. The tank opening allows fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes.

(7) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(8) Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(9) Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(10) Covered ozone attainment counties--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(11) Dallas-Fort Worth area--For purposes of Subchapter B, Division 5 of this chapter (relating to Municipal Solid Waste Landfills) Collin, Dallas, Denton, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(12) Dual-point vapor balance system--A type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for vapor connection.

(13) El Paso--El Paso County.

(14) Emergency flare--A flare that only receives emissions during an upset event.

(15) External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(16) Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(17) Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(18) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(19) Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(20) Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(21) Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOC): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOC: ethylene and propylene.

(22) Houston-Galveston or Houston-Galveston-Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(23) Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(24) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(25) Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(26) Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(27) Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(28) Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(29) Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does

not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(30) Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(31) Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(32) Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(33) Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems.

(34) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(35) Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(36) Pressure relief valve or pressure-vacuum relief valve--A safety device used to prevent operating pressures from exceeding the maximum and minimum allowable working pressure of the process equipment. A pressure relief valve or pressure-vacuum relief valve is automatically actuated by the static pressure upstream of the valve but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(37) Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(38) Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(39) Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(40) Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(41) Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(42) Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(43) Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(44) Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(45) Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(46) Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(47) True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(48) Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(49) Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(50) Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(51) Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.221, 115.222, 115.224 - 115.227, 115.229

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The amendments are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendments are also adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§115.226. Recordkeeping Requirements.

The owner or operator of each gasoline dispensing facility in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall maintain the following records and during an inspection make the records available at the site upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control program with jurisdiction. The owner or operator shall:

(1) maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility and the identification number and date of the last leak testing, required by §115.224(2) of this title (relating to Inspection Requirements), of each tank-truck tank from which gasoline was transferred to the facility. The records shall be kept for a period of two years; and

(2) maintain for a period of two years:

(A) a record of the results of any testing conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.225 of this title (relating to Testing Requirements); and

(B) a record of the gasoline throughput for a 24-month rolling calendar period beginning January 1, 1991. The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month.

§115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division, except for:

(A) §115.222(3) of this title (relating to Control Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) of this title;

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) of this title (relating to Recordkeeping Requirements).

(2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at gasoline dispensing facilities are exempt from the requirements of this division, except for:

(A) §115.222(3) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) of this title; and

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors.

(3) In the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed less than 100,000 gallons of gasoline in any calendar month after October 31, 2014 are exempt from the requirements of this division, except for:

(A) §115.222(3) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) of this title;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) of this title.

(4) In Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division, except for:

(A) §115.222(3) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) of this title;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) of this title.

(5) Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2014.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§312.4, 312.8, 312.10 - 312.13, 312.41, 312.42, 312.44, 312.45, 312.47, 312.50, 312.65, and 312.81 - 312.83.

The commission adopts the amendments to §§312.4, 312.8, 312.10, 312.11, 312.41, 312.42, 312.44, 312.47, 312.50, and 312.82 *with changes* to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2773). The commission also adopts the amendments to §§312.12, 312.13, 312.45, 312.65, 312.81, and 312.83 *without changes* to the proposed text, and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

On May 13, 2013, the TCEQ received a petition from Mr. Cole Turner (petitioner), on behalf of the landowners and citizens of Ellis County (Project Number 2013-033-PET-NR).

The petitioner requested that TCEQ amend Chapter 312 in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

On June 18, 2013, the commissioners instructed the executive director to examine the issues raised in the petition and to initiate a rulemaking proceeding to address nuisance odor issues at bulk sewage sludge land application sites on a statewide basis. As part of this rulemaking proceeding, the commission instructed the executive director to engage stakeholders and to report back to the commission with findings and recommended actions, if any, within five months.

The Water Quality Division and Regional office staff conducted site visits at various wastewater treatment plants (WWTPs), sewage sludge processing facilities and bulk sewage sludge land application sites throughout the state. The objective was to evaluate different types of bulk sewage sludge treatment processes and evaluate odors at several sewage sludge processing and land application sites. Staff concluded that sewage sludge facilities that use more advanced treatment processes such as heat drying or composting tend to have more typical odors than those that do not.

The executive director held stakeholder meetings in Parker, Ellis, Waller, and Travis Counties. The comments received at the stakeholder meetings and in writing included support for and against the petition.

At the November 20, 2013, Commissioners Agenda, the executive director recommended initiating a state-wide rulemaking rather than the three-mile prohibition requested in the petition. This recommendation to move forward with the rulemaking process was based upon stakeholder comments requesting relief from odors, vectors, unauthorized discharges from land application sites, tracking of material on roadways and staff observations during site visits. The commissioners instructed the executive director to proceed with releasing draft rule concepts and draft rule language to stakeholders.

The executive director's concept for rulemaking includes separating existing Class A into two categories, Class A and Class AB, and including additional management provisions to address odor. The management provisions for each category become more stringent as the treatment processes used for pathogen reduction are less advanced. This approach provides additional incentives for permittees to select more advanced pathogen treatment processes which tend to reduce odors (composting, heat drying, pasteurization, and other equivalent processes) and to promote land application through incorporation into the soil, when feasible.

A concern provided during the stakeholder meetings was TCEQ's inability to respond quickly to odor complaints and prevent recurrences. Therefore, in addition to the changes to sludge classification, the rules would clarify the executive director's existing ability to include additional, more stringent requirements to any Class A, AB, or B site such as requiring an Odor Control Plan with measurable goals, as needed. This would allow TCEQ investigators to determine compliance with specific permit conditions designed to address odor and other compliance issues at a specific site and aid in addressing recurrent issues. In addition, staff evaluated existing requirements within Chapter 312 for Class B sites, which could be applied to all sites to address odor.

On January 7, 2014, the Water Quality Division conducted its final stakeholder meeting to present concepts and draft rule language for informal comment.

Section by Section Discussion

The commission is adopting to add new Class AB throughout the entire rulemaking where appropriate.

Because the definitions of Class A, adopted Class AB and Class B, found in §312.8, includes the word "sewage" before the word "sludge," and certain sections of the rule currently state only the word "sludge" after Class A or Class B, the commission is adopting to add the word "sewage" before the word "sludge" throughout this rulemaking adoption. The reason for this change is to maintain consistency in the rules.

Instances where sewage sludge is referenced in the same sentence will not include "sewage" or "sludge" after Class A, Class AB or Class B.

§312.4, Required Authorizations or Notifications

The commission adopts amended §312.4(b), (b)(1) and (4) to include "Class AB" due to its applicability to notice and reporting requirements.

The commission adopts amended §312.4(c)(1) to include "Class AB" due to its applicability to registration requirements.

The commission adopts amended §312.4(b)(2) to replace "Land Application Team" with "Water Quality Division" for addressing notification forms of Class A or Class AB sewage sludge land application sites.

The commission adopts the change sewage sludge "composition" to "classification" when requiring notification of Class A or Class AB sewage sludge land application in §312.4(b)(2)(A). Both Class A and new Class AB will now require notification, and it is important to distinguish between the two classes because they have different site management conditions. Also, the commission is adding a requirement to include longitude and latitude coordinates for land application sites, in §312.4(b)(2)(B), when sending notification to the Water Quality Division for Class A or Class AB sewage sludge land application sites. This requirement will aid in determining the location of each land application site.

The commission adopts amended §312.4(b)(2)(D) by requiring the submittal of a map prior to land application for a notified Class AB land application site which shows the buffer zone areas required under §312.44(c)(2)(D) and (E).

The commission adopts amended §312.4(b)(4) by requiring an operator to include an updated list of persons receiving the sewage sludge in each annual Class A or Class AB sewage sludge land application report. Since Class A and Class AB notifications do not expire, it will assist the TCEQ in keeping an up-to-date list of the receivers of sewage sludge for land application.

§312.8, General Definitions

The commission adopts amended §312.8(17) which provides more clarification to the definition of Class A sewage sludge by adding §312.82(a)(1)(B) when describing it as sewage sludge meeting the pathogen reduction requirements in §312.82(a)(1)(B). This is to distinguish Class A sewage sludge from the new requirements of Class AB sewage sludge.

The commission adopts amended §312.8 which provides for the definition for Class AB sewage sludge to distinguish it from the other classifications of sewage sludge that are currently in the rule. The Class AB sewage sludge definition is in §312.8(18), and due to this addition, all existing definitions that follow paragraph (18) have been renumbered accordingly.

The commission adopts amended §312.8(54) by changing the word "that" to "than" to be grammatically correct for the definition of "Major sole-source impairment zone."

The commission adopts amended §312.8(74) by adding "or grit and screenings" to clarify what is excluded from sewage sludge.

The commission adopts amended §312.8(82) by adding "per each staging location" to clarify that sewage sludge is staged for seven days in different locations at a land application site.

§312.10, Permit and Registration Applications Processing

The commission adopts amended §312.10(g) to include the word "sewage" before the word "sludge" to be consistent with the definitions because the definitions of Class A, adopted Class AB and Class B, found in §312.8, include the word "sewage" before the word "sludge," and certain sections of the rule currently state only the word "sludge" after Class A or Class B. The commission also adopts amended §312.10(g) to include "Class AB" due to its applicability to the application processing procedures and requirements in 30 TAC §§281.18 - 281.20.

§312.11, Permits

The commission adopts amended §312.11(c)(1)(B)(iii) to change the reference from Class A to Class B.

The commission adopts amended §312.11(d)(6) to include the word "sewage" before the word "sludge" to be consistent with the definitions. Since the definitions of Class A, adopted Class AB and Class B include the word "sewage" before "sludge" it is appropriate to be consistent with each term.

The commission adopts amended §312.11(g) by updating the Enforcement Division mail code identification number from MC 149 to Mail Code 224 for submittal of noncompliance information to the TCEQ. The Enforcement mail code number has changed since the current Chapter 312 rules were written. Also "MC" has been changed to "Mail Code" because there is no other reference to the MC acronym in prior sections of the rule.

§312.12, Registrations

The commission adopts amended §312.12(b) and (b)(1)(C)(iv) to include the word "sewage" before the word "sludge" to be consistent with the definitions. Since the definitions of Class A, adopted Class AB and Class B include the word "sewage" before "sludge" it is appropriate to be consistent with each term. The commission also adopts amended §312.12(b) and (b)(1)(C)(iv) to include" Class AB" due to its applicability to registrations.

§312.13, Actions and Notice

The commission adopts amended §312.13(c)(1) to include "Class AB" due to its applicability to notice requirements for registrations.

§312.41, Applicability

The commission adopts amended §312.41(b) by changing the applicability section because all classes of bulk sewage sludge will now be subject to new core requirements under §312.44(a), (b), (h)(3), (j), and (m).

The commission adopts amended §312.41(b)(1)(A) by adding applicability for the adopted Class AB sewage sludge requirements under §312.44(a), (b), (c)(2)(D) and (E), (d), (h)(1), (3), (5), and (6), (j), (l), and (m).

The commission adopts amended §312.41(b)(1)(B) to identify an exemption to the requirements under adopted §312.41(b)(1)(A) for Class AB sewage sludge when the sludge is injected or incorporated into the soil at the land application site.

The commission adopts the requirements pertaining to applicability for bulk sewage sludge in §312.41(b) to the applicability for General Requirements for Bulk Derived Materials in §312.41(c). Derived materials are the products that are produced when sewage sludge is mixed with bulking agent. The bulking agent may be compost, straw, wood chips, saw dust, shredded brush, etc. and must follow the same requirements as bulk sewage sludge.

The commission adopts amended §312.41(d) to include "Class AB" due to its applicability to special requirements for certain bulk derived materials.

The commission adopts amended §312.41(e) to include "Class AB" due to its applicability to special requirements for bagged sludge.

The commission adopts amended §312.41(f) to include "Class AB" due to its applicability to bagged derived materials.

The commission adopts amended §312.41(g) to include "Class AB" due to its applicability to bagged materials.

§312.42, General Requirements

The commission adopts amended §312.42(i) to provide for when the applicant is to determine to concentration of regulated metals. The current rule refers to §312.12(a)(1)(E). The new reference to rule will be correctly listed as §312.12(b)(1)(I).

§312.44, Management Practices

The commission adopts amended §312.44(h)(3) to provide more clarity pertaining to prohibiting land application during certain surface conditions. Along with the current prohibitions associated with rainstorms or during periods in which surface soils are water-saturated, the rule will also include a new prohibition, "when pooling of water is evident on the land application site." This provision will be applicable to Class A, Class AB and Class B bulk sewage sludge land application sites.

The commission adopts amended §312.44(h)(3) by adding a requirement that will require the operator of a TCEQ permitted or bulk sewage sludge site subject to the notification requirements in §312.4(b) who land applies sewage sludge on agricultural land to submit an Adverse Weather and Alternative Plan that addresses actions to be taken when sewage sludge cannot be land applied due to adverse weather. This adopted requirement is intended to address possible odor conditions from adverse weather.

The commission adopts amended §312.44(j)(3) that currently states: "If necessary or when significant nuisance conditions occur" to "To prevent nuisance conditions from occurring". This change provides more clarity as to the intent of the requirement. Within the same subsection, the commission is replacing the word "objectionable" with "offensive" in §312.44(j)(3)(B) because the TCEQ odor complaint guidance uses the term "offensiveness" when assessing the frequency, intensity, duration and offensiveness (FIDO) classification. The commission adopts amended §312.44(j)(3)(C) which will require an operator to develop and implement best management practices (BMPs) to minimize off-site tracking of sewage sludge and sediment during the transport of sewage sludge material to and from the land application site or storage area and to include at a minimum, removing tracked material, to the extent practicable, by the end of each day of operation at the site and either returning it to the site or otherwise disposing of it properly. The documented BMPs shall be retained by the operator and made be readily available for review by a TCEQ representative. Adopted §312.44(j)(3)(C) will be applicable to Class A, Class AB, and Class B bulk sewage sludge, and will help enforce against instances when sewage sludge debris has been tracked off-site and on to roadways.

The commission adopts amended §312.44(j)(4) to clarify the executive director's ability, on a case-by-case basis, to require a person who prepares sewage sludge or land applies sewage sludge on agricultural land to submit an Odor Control Plan. A typical Odor Control Plan may include the following elements: 1) identification of odor sources; 2) evaluation of the processing of the sludge source; 3) implementation of corrective action measures; 4) implementation of BMPs; 5) identification of milestones and deadlines of submittals; 6) professional engineer certification; and 7) submission of progress reports and a final report. The executive director would require a person who prepares sewage sludge or land applies sewage sludge on agricultural land to prepare and implement an Odor Control Plan in cases where nuisance odors from the processing, transport, storage, or land application of sewage sludge have been substantiated by TCEQ staff. This paragraph also clarifies that the commission or executive director has the authority to require such a plan (as stated in §312.6). This provision will be applicable to Class A, Class AB and Class B bulk sewage sludge.

The commission adopts amended §312.44(l) by changing the term: "permit holder" to "operator" and adding Class AB sewage sludge. This is an existing requirement for Class B sewage sludge sites which will now also be applicable to Class AB sewage sludge sites. It will require the operator to post a sign that is visible from a publically accessible road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a sewage sludge beneficial land application site is located on the premises. The commission also adopts timing requirements to the rule that would require the sign be posted three days prior to and 14 days after the commencement of land application of sewage sludge. In the event of reasonably unforeseen weather conditions or equipment failure that would necessitate a change in the planned land application site, the required sign must be posted on the day that sewage sludge land application commences. If signs are posted less than three days prior to land application, records shall be maintained documenting the unforeseeable circumstance that necessitated the change in a planned land application site. Such records shall be retained by the operator and be readily available for review by a TCEQ representative. Records of any deviation of the posting requirements listed in §312.44(l) and associated reasons shall be retained by the operator and be readily available for review by a TCEQ representative. The required sign must include the operator name, telephone number, the classification of sewage sludge, and the TCEQ authorization number.

The commission adopts amended §312.44(m) to change the term: "permit holder" to "operator" and is adding Class A and Class AB sewage sludge. This is an existing requirement for Class B which will now be applicable to all classes of sewage

sludge. It will require that trucks transporting sewage sludge are appropriately covered to prevent spillage of material during transport.

The commission adopts amended §312.44(m) to include: "All vehicles and equipment used for the transport of bulk Class A, Class AB or Class B sewage sludge for land application or disposal shall be constructed, operated, and maintained to prevent the loss of liquid or solid materials during transport."

§312.45, Operational Standards--Pathogens and Vector Attraction

The commission adopts amended §312.45(a)(1) - (3), to include "Class AB" due to its applicability to pathogen reduction requirements.

§312.47, Record Keeping

The commission adopts amended §312.47(a)(1)(B) and (C), (2)(B) and (C), and (3) to include "Class AB" due to its applicability to record keeping requirements. The commission also adopts amended §312.47(a)(1)(B) and (C), (2)(B) and (C), (3), (4)(A)(ii) and (iii), (6)(C) and (D) to include the word "sewage" before the word "sludge" to be consistent with the definitions. Since the definitions of Class A, adopted Class AB and Class B include the word "sewage" before "sludge" it is appropriate to be consistent with each term.

The commission adopts amended §312.47(a)(5)(B)(ii) by changing units from "hectares" to "acres", because all sewage sludge land application sites are currently measured and reported in acres.

§312.50, Storage and Staging of Sludge at Beneficial Use Sites

The commission adopts §312.50(a)(10), which provides that an operator that prepares or land applies sewage sludge must comply with an Odor Control Plan if required under adopted §312.44(j)(4).

The commission adopts the amendment to the staging requirements in §312.50(c) to include that stage is allowed for a maximum of seven calendar days per location within a beneficial land application site and to allow, with prior approval from the TCEQ regional office, up to an additional 14 days for staging of sewage sludge. This allowance is intended to cover situations when more time would be needed due to weather conditions that would cause flooding, saturated soils, frozen soils or equipment failure. Also, written records of the location of each staging area and timeframe in which sewage sludge was staged shall be retained by the operator and be readily available for review by a TCEQ representative. Additional language to this subsection also includes requirements for the operator to stage the sewage sludge away from odor receptors in order to minimize off-site dust migration and nuisance odors. The commission adopts to include the requirement that the operator make readily available for review by a TCEQ representative written records of the location of each staging area and the timeframe in which sewage sludge was staged.

§312.65, Operational Standards--Pathogen and Vector Attraction

The commission adopts amended §312.65(a) to include "Class AB" due to its applicability to pathogen and vector attraction reduction requirements. The commission also adopts amended §312.65(a) to include the word "sewage" before the word "sludge" to be consistent with the definitions. Since the definitions of Class A, adopted Class AB and Class B include the word "sewage" before "sludge" it is appropriate to be consistent with each term.

§312.81, Scope

The commission adopts amended §312.81(a) to include" Class AB" due to its applicability to pathogen and vector attraction reduction requirements.

§312.82, Pathogen Reduction

The commission adopts amended §312.82. Given the separation of the current Class A pathogen requirements into two classes: Class A and Class AB, the commission adopts amended §312.82(a)(1) to distinguish the pathogen requirements from Class A and Class AB. This separation of the two classes also required §312.82(a)(2) to be changed from Class A to Class AB and the addition of adopted §312.82(a)(1)(B) to specifically define the pathogen requirements of Class A, while allowing for a variance process that demonstrates an equivalent method for reducing odors. The executive director may deny the variance request or revoke that approved variance if it is determined that the variance may potentially endanger human health or the environment, or create nuisance odor conditions. For sludge to be categorized as Class AB, the density of fecal coliform in the sewage sludge must be less than 1,000 Most Probable Number (MPN) per gram of solids or the density of Salmonella in the sewage sludge must be less than three MPN per four grams of total solids and it must meet one of the pathogen alternatives listed under Alternatives 2, 3, and 4, which are listed in §312.82(a)(2). These alternatives include: Alternative 2 - high pH; Alternative 3 - temperature and time; and Alternative 4 - concentrations of enteric viruses and helminth ova (known and unknown processes). For sludge to be categorized as Class A, the density of fecal coliform in the sewage sludge must be less than 1,000 MPN per gram of solids or the density of Salmonella in the sewage sludge must be less than three MPN per four grams of total solids and it must meet one of the pathogen alternatives listed under Alternatives 1, 5, and 6, which are listed in adopted §312.82(a)(3). Alternative 1 includes time and temperature. Alternative 5 includes Processes to Further Reduce Pathogens (PFRP). Examples of PFRP are composting, heat drying, heat treatment, thermophilic aerobic digestion or pasteurization. Alternative 6 is a process that is equivalent to a PFRP and requires United States Environmental Protection Agency approval.

§312.83, Vector Attraction Reduction

The commission adopts amended §312.83(b)(2) and (3) to change the word: "can not" to "cannot" to be grammatically correct.

The commission adopts amended §312.83(b)(9) to include "Class AB" due to its applicability to vector attraction reduction via injection of sewage sludge below the surface of the land.

The commission adopts amended §312.83(b)(10) to include "Class AB" due to its applicability to its applicability to vector attraction reduction via incorporation of sewage sludge into the soil.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined

in that statute. Texas Government Code, §2001.0225 applies to "major environmental rules" the result of which are to exceed standards set by federal law, express requirements of state law, requirements of a delegation agreement between state and the federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state. The adopted rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to ensure regulatory consistency by expanding existing "core requirements" to all classifications of sewage sludge, establish a more comprehensive regulatory classification for sewage sludge and clarify the executive director's authority to include additional requirements in the regulation of land application of sewage sludge. The adopted rulemaking affects the same class of regulated entities, except that the entities may be subject to more or less stringent requirements depending on the processes employed by those entities.

The adopted rulemaking modifies the state rules related to land application of sewage sludge. This will have an impact on the environment, human health, or public health and safety; however, the adopted rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the adopted rulemaking does not meet the definition of a "major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a "major environmental rule," it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the adopted rulemaking does not exceed an express requirement of state law, but rather changes the requirements under state law to ensure regulatory consistency, regulate more comprehensively the land application of sewage sludge, and clarify the executive director's authority related to regulating land application of sewage sludge. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts the rulemaking under Texas Water Code, §§5.013, 5.102, 5.103, 5.120, 26.011, 26.027, and 26.041. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the adopted rulemaking is to modify the Texas Administrative Code to ensure regulatory consistency by expanding existing "core requirements" to all classifications of sewage sludge, establish a more comprehensive regulatory classification for sewage sludge and clarify the executive director's authority to include additional requirements in his regulation of land application of sewage sludge. The adopted rulemaking will substantially advance this stated purpose by adopting language intended to regulate more comprehensively the land application of sewage sludge.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* which therefore, requires that the goals and policies of the CMP be considered during the rulemaking process.

CMP goals applicable to the adopted rules include protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. Ensuring sound management of all coastal resources that balances the benefits of economic development with multiple human uses of the coastal zone, while enhancing planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone.

CMP policies applicable to the adopted rules include 31 TAC §501.13(a)(1) and (2) that mandate commission rules, require applicants to provide necessary information so that the commission makes an informed decision on a adopted action listed in 31 TAC §505.11 (relating to Actions and Rules Subject to the CMP), and identify the monitoring needed to ensure that activities authorized by actions listed 31 TAC §505.11 comply with all applicable requirements.

The adopted rulemaking ensures regulatory consistency by expanding existing "core requirements" to all classifications of sewage sludge, establishes a more comprehensive regulatory classification for sewage sludge, and clarifies the executive director's authority to include additional requirements in his regulation of land application of sewage sludge. By adopting

these rules, there will be greater protection in the areas of concern to the CMP.

The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with those CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on May 6, 2014, in Austin. The comment period closed on May 12, 2014. The commission received comments from Alan Plummer Associates, Inc.; the City of Dallas; the City of Fort Worth; The Honorable Paul Perry, County Commissioner, Precinct 3 of Ellis County (Commissioner Perry); Renda Environmental, Inc.; Synagro Technologies, Inc.; the Texas Compost Council; the Water Environment Association of Texas (WEAT); Texas Association of Clean Water Agencies (TACWA); and two individuals.

Response to Comments

Comment

Alan Plummer Associates, Inc. commented that the description and discussion on §312.41(b)(1)(A) needs to be revised because the provisions listed, which are proposed to be applicable land application of Class AB sewage sludge are not correct. The list includes §312.44(c)(2), which is the section addressing all types of buffer zones. Only the buffer zones specified in §312.44(c)(2)(D) and (E) are required for land application of Class AB sewage sludge. Therefore, the list should be revised.

WEAT and TACWA found this as an inconsistency that may lead to confusion and recommend a careful review to eliminate this inconsistency and to provide clarity. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

The TCEQ acknowledges this typographical error and has changed the Section by Section Discussion in the adopted preamble for §312.41 to replace §312.44(c)(2) with §312.44(c)(2)(D) and (E) when requiring buffer zones for land application of Class AB sewage sludge.

Comment

Alan Plummer Associates, Inc. commented that the description and discussion in the proposed preamble that refers to §312.41(c), needs to be revised because the description of and discussion about bulk derived materials is incorrect. Derived materials are not the products that are added to sewage sludge, but are instead the products that are produced when sewage sludge is mixed with bulking agent, which may be compost, straw, wood chips, saw dust, shredded brush, etc. It is incorrect to use the term "derived sewage sludge" when describing bulking agents.

In addition, the revision proposed to §312.41(c) refers to "bulk derived sewage sludge." The spelling, as well as, the terminology is not correct. The proper term is "derived material from sewage sludge." The term "derived material from sewage sludge" is consistent with the section heading and the term used in the existing regulations. WEAT and TACWA found this as an inconsistency that may lead to confusion and recommend a careful review to eliminate this inconsistency and to provide clarity. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

The TCEQ agrees with this comment and has changed the Section by Section Discussion in the adopted preamble for §312.41(c) to state that derived materials are the products that are produced when sewage sludge is mixed with a bulking agent and that the bulking agent may be compost, straw, wood chips, saw dust, shredded brush, etc. and must follow the same requirements as bulk sewage sludge.

Comment

Alan Plummer Associates, Inc. commented that the discussion in the proposed preamble regarding revisions to §312.42(i) ("The applicant shall determine the concentration of regulated metals in accordance with §312.12(a)(1)(E)") needs to be revised. The proposed revision, intended to clarify when a permittee must conduct metals analyses, removes the reference to §312.12(a)(1)(E), but incorrectly references §312.43 (relating to Metal Limits). The correct reference should be §312.12(b)(1)(I) instead of §312.43. Section 312.43 addresses only the applicable quality criteria for metals, and does not address when permittees must conduct metals analyses.

The requirements specified in §312.12(b)(1)(I), however, describe the protocols for collecting soil samples as required for an application. The protocol specified in §312.12(b)(1)(I), is also consistent with the protocols specified in §312.12(a)(1)(E) of the 1995 version of the rules. WEAT and TACWA found this as an inconsistency that may lead to confusion and recommend a careful review to eliminate this inconsistency and to provide clarity. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

The TCEQ agrees with this comment and has corrected §312.42(i) to reference §312.12(b)(1)(I).

Comment

Alan Plummer Associates, Inc. commented that the discussion under §312.11(c)(1)(B)(iii), submission of adjacent landowner information, needs to be revised because the authorization for conducting land application of Class A and Class AB sewage sludge does not require a permit to be obtained. Therefore, the proposed revision to the permit application provisions and the intent for this revision as indicated in the Background and Summary are inconsistent. WEAT and TACWA found this as an inconsistency that may lead to confusion and recommend a careful review to eliminate this inconsistency and to provide clarity. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

The TCEQ agrees with this comment and has deleted "or Class A or sewage sludge beneficial use land application", and changed Class AB to Class B in §312.11(c)(1)(B)(iii).

Comment

Alan Plummer Associates, Inc. commented that the discussion under §312.50(a)(10) needs to be revised because the terms are inconsistent within the provision. The plan is referred to as an "Odor Control Plan" in one place and an "Odor Prevention Plan" in another. WEAT and TACWA found this as an inconsistency that may lead to confusion and recommend a careful review to eliminate this inconsistency and to provide clarity. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

In response to this comment, the TCEQ has changed the term "Odor Prevention" to "Odor Control" in §312.44(j)(4).

Comment

An individual commented that the use of biosolids should be plowed into the ground so that it will allow the product to break down into the soil and reduce the contamination of run-off water. The individual further commented that plowing biosolids in the ground will help with the smell and will be more appropriate for what is considered beneficial use instead of leaving the material on top of the ground where it takes a long time to break down.

Response

The TCEQ respectfully disagrees and cannot require all land application sites state-wide to plow or incorporate the sewage sludge into the soil. Many land application sites throughout the state grow crops throughout the year that are pastureland crops such as Coastal Bermuda grass or ryegrass. Requiring only plowing or incorporating the biosolids into the ground would not be feasible for most of these sites. No change was made in response to this comment.

Comment

Commissioner Perry commented that there needs to be additional regulation regarding the use of human waste-derived sludge in unincorporated areas and that the sludge is being distributed in areas that frequently flood resulting in the sludge being transported into creeks and waterways. Commissioner Perry is also concerned about the effect that continued use of sewage sludge will have upon tax valuations, quality of life, public health and quality of development.

Response

The primary objective of the TCEQ's Beneficial Land Use Program is to ensure that the use of treated sewage sludge will neither endanger the public health nor degrade the environment. Beneficial land use site locations must be selected and the site operated in a manner to prevent public health nuisances and only properly treated materials that have met rigid requirements to reduce vector attraction and to significantly reduce pathogens are approved for land application. In addition, §312.44 outlines detailed management practices which include buffer zone requirements for both Class AB and Class B sewage sludge that restrict how close a land application area may be located to property boundaries, public right of ways, residences, schools or businesses to minimize the potential for causing nuisance conditions.

The operator of a sewage sludge land application site is required to adhere to certain conditions for the application of the treated sewage sludge. The material must be applied uniformly over the surface of the land and must not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Sewage sludge debris must be prevented from blowing or running off site boundaries or into surface waters and must not be applied to a site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other water in the state.

TCEQ does not have regulatory or statutory authority to consider property values, the marketability of adjacent property, or economic development in its determination of whether to issue a water quality permit. No change was made in response to these comments.

Comment

Commissioner Perry is concerned that there are budget-busting effects that the hundreds of tractor trailer-sized deliveries are having on the 290 plus miles of roads and bridges.

Response

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ does not have jurisdiction under the Texas Water Code or its regulations to address or consider maintenance or construction of roads and the TCEQ's jurisdiction is limiting to addressing problems occurring on county roads relating to spills of sewage sludge. The county is responsible for taking action on problems related to the integrity of the county roads. No change was made in response to this comment.

Comment

The Texas Compost Council commented that in the proposed rule language, it now appears to apply to any site where bulk sewage sludge products are applied. Most sales of biosolids compost fall into the bulk products category and usually are delivered in one day and it makes no sense to require each of these customers to "submit an Adverse Weather and Alternative Plan" as described in §312.44(h)(3). The thousands of "Plans" required by compost sales will create an unnecessary burden on the compost industry and create a mountain of paperwork for the TCEQ to manage, without providing any benefit to the waters and environment of the state.

The Texas Compost Council suggested adding "permitted and registered" to §312.44(h)(3) when requiring an Adverse Weather and Alternative Plan so that it clarifies the intent and reduce the unnecessary work load for the regulated industry and the TCEQ.

WEAT and TACWA have also expressed concern about the requirement of an Adverse Weather and Alternative Plan as described in §312.44(h)(3). It is WEAT and TACWA's position that the requirement was neither intended, nor would be realistic to extend to sites where compost, heat-dried biosolids or biosolid-derived soils are used on home lawns, highway rights-of-ways, sports fields, etc. Therefore, WEAT and TACWA recommend that the Adverse Weather and Alternative Plan be applicable only to land application sites where biosolids are applied for agricultural use. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

The Chapter 312 rule revisions were not in any way intended to affect the composting industry or for public contact sites in which heat-dried biosolids or biosolid-derived soils that are used on home lawns, highway rights-of-ways, sports fields, cemeter-

ies, public parks, etc., and have a high potential for contact by the public. The TCEQ agrees and has changed §312.44(h)(3) to state that the operator of a TCEQ permitted or bulk sewage sludge site subject to the notification requirements in §312.4(b) who land applies sewage sludge on agricultural land shall submit an Adverse Weather and Alternative Plan. Agricultural land, by definition is land on which a food crop, a feed crop, or a fiber crop is grown and includes range land used as pasture.

Comment

Synagro Technologies, Inc. expressed concern that additional burdensome regulations, like those being proposed in the rule will cause the cities and agencies to face more difficulty finding methods to recycle or dispose of their biosolids in both the short and long term, and available beneficial use management options are typically and unnecessarily much more expensive to taxpayers. Once rules are adopted, further restrictions and bans elsewhere, characteristically based on misinformation and anti-urban sentiment rather than science. Synagro Technologies, Inc. is also concerned that the enforcement of the proposed rules will harm public agencies in Texas because beneficial use alternatives to land application are typically more expensive and can be environmentally problematic, especially when selecting landfill disposal as the likely alternative. The City of Dallas expressed that it has a vested interest in ensuring that the rules, as adopted, are protective of the environment but not unduly burdensome.

Response

The additional regulations will ensure that the beneficial use program in Texas will continue by putting more safeguards in place which will reassure the public that this program is protective of human health and the environment, without being unduly burdensome. The executive director does not anticipate that the proposed rules will result in substantial additional costs to cities, taxpayers or private entities. No change was made as a result of this comment.

Comment

The City of Fort Worth commented they would like different labels for the different types of sewage sludge than what is proposed. The City of Fort Worth believes only the newly-created sludge classification should be assigned a new label. The City of Fort Worth suggests that the new classification for sewage sludge treated to the highest level should be designated as "Class AA" instead of "Class A" and that "Class AB" the next level of treatment should be designated as "Class A." In that way, sewage sludge currently classified as "Class A" will continue to be known as "Class A" and the newly-created classification for the most highly treated sludge will be known by the new classification of "Class AA."

The City of Fort Worth suggests that every place in the proposed rules refer to "Class AB sewage sludge" should be revised to "Class A sewage sludge" and every place that the proposed rules refer to "Class A sewage sludge" should be revised to "Class AA sewage sludge."

Renda Environmental requests that Class AB not be used in reference to the new rules pertaining to biosolids and proposes that the new sludge rules pertain to Class A biosolids and those processes that produce a product of perceived higher quality be referred to as Class AA.

Response

Although the new classification was originally titled Class AA, the name was changed to Class AB during the rulemaking process. This change was based on comments made by stakeholders and the fact that Class AB sewage sludge combines most of the basic qualities of Class A sludge with the certain management practices of Class B. Therefore, the TCEQ will retain Class AB sewage sludge in the proposed rules. No change was made as a result of these comments.

Comment

The City of Fort Worth requests that at appropriate places throughout the rulemaking TCEQ change the term "sewage sludge" to "biosolids" to be consistent with prevailing water industry terminology. Because the United States Environmental Protection Agency recognizes a distinction between the two terms; "biosolids" refers to sewage sludge that has undergone treatment and meets federal and state standards for beneficial use, while "sewage sludge" refers to raw sewage sludge containing large amounts of pollutants, the City of Fort Worth requests that the Chapter 312 rules be revised to incorporate this distinction and to add a definition for the term "biosolids."

Response

This comment is beyond the scope of this rulemaking or jurisdiction of the commission. Further, the comments do not address water quality issues related to the proposed rules. No change was made as a result of this comment.

Comment

The City of Fort Worth requests that TCEQ revise the definition of "sewage sludge" to clarify that this term does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works.

Response

The TCEQ acknowledges the merit in the request to include "or grit and screenings" to the definition of sewage sludge in §312.8(74) and has therefore, made a change to the definition based on the comment provided.

Comment

The City of Fort Worth requests that TCEQ add a definition for the term "Best Management Practices" so that the regulated community will know what level of management standards will be considered adequate when proposing an Odor Control Plan.

Response

BMPs are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or to address a particular problem. BMPs proposed within an Odor Control Plan should be developed to address the source of the odors following an in-depth investigation of facility processes and consideration of various odor influencing factors unique to the site. The adequacy of the BMPs will vary between sites and ultimately be determined by their effectiveness at controlling odors.

Comment

The City of Fort Worth requests that §312.44(h)(1) be modified to eliminate subjective discretion in determining what constitutes "uniform application" of sewage sludge.

Response

The requested edits have the potential to undermine the purpose of this rule provision, which is to require uniform application of sewage sludge over the surface of the land, and not designing or implementing methods to achieve uniform land application. No change was made as a result of this comment.

Comment

Because the City of Fort Worth believes it is unfair or inequitable to charge sewage sludge operators with a nuisance odor violation merely because properly treated biosolids are impacted by uncontrollable natural events such as rainfall, the City of Fort Worth requests that proposed §312.44(h)(3) be revised to include that the operator of a sewage sludge site shall be deemed in violation of its Adverse Weather and Alternative Plan or TCEQ rules prohibiting creation of nuisance odors to the extent any nuisance odors are caused or exacerbated by contact of precipitation with sewage sludge.

Response

The suggested edits are not feasible due to the subjectivity inherent in defining or determining the extent of causation or exacerbation. No change was made to the rule based on this comment.

Comment

The City of Fort Worth has expressed concern that because there is no definition of "nuisance odor" and because the definition of a nuisance can be highly subjective, the regulated community needs some type of objective standard for determining what constitutes a nuisance odor. The City of Fort Worth further commented that members of the regulated community already use the TCEQ's most convenient tool for determining the existence of a potential nuisance odor, the Odor Complaint Investigation Procedures ("OCIP") guidance document dated September 18, 2007. This guidance document, and the FIDO criteria incorporated in it, are already familiar to most members of the regulated community and so reference to it in the rules would provide more regulatory certainty considering nuisance odors in the rules. The City of Fort Worth recommends adding language to §312.44(j)(3) that would allow the TCEQ to utilize the OCIP guidance document or subsequent revision of such guidance document when determining whether a nuisance odor condition exists.

Response

Nuisance odor is currently and will continue to be regulated under 30 TAC §101.4. TCEQ's Field Operations Division determines the methodology for assessing compliance with this regulation across agency programs. No change was made as a result of this comment.

Comment

The City of Fort Worth requests that §312.44(j)(4), with regards to the requirement to submit an Odor Control Plan, be revised to set forth the seven elements mentioned in the rule preamble. These elements include identifying odor sources, evaluating the processing of the sludge source, implementing corrective action measures, implementing BMPs, identifying milestones and deadlines of submittals, obtaining professional engineering certification, and submitting progress reports and a final report.

Response

The seven measures listed in the preamble were listed solely for the purpose of illustrating what an Odor Control Plan may contain and were not intended to be a comprehensive list of possible odor prevention measures. Each Odor Control Plan will be formulated on a case-by-case basis according to the variables or characteristics of the land application site in question, and would not necessarily be limited to only these measures. No change was made as a result of this comment.

Comment

The City of Fort Worth has expressed concern about the requirements for Vector Attraction Reduction, specifically Alternative No. 6 as described in §312.83(b)(6). TCEQ's informal policy is that the sewage sludge must remain at the accumulation pad site at the WWTP for a minimum of 24 hours before it may be allowed to be transported off-site for land application. The City of Fort Worth explains that, based on their experience and studies, this TCEQ policy results in substantially increased odor problems as compared to a policy that would allow up to 22 hours of the 24-hour "waiting period" to be accomplished off-site, i.e., while the sewage sludge is being transported to or staged for land application. Requiring sewage sludge to remain at the pad site unnecessarily gives the sewage sludge more time to undergo the biological reactions that cause odor problems. Once the pH drops below 11.5 following the 24-hour period, odor problems become significantly more noticeable. The City of Fort Worth requests that §312.83(b)(6) include a statement that sewage sludge may be transported and staged during the 22-hour holding period prior to land application.

Response

Currently, the TCEQ rules do not prohibit the transportation to or staging at a sewage sludge land application site prior to achieving the time and pH requirements as stated in §312.83(b)(6). However, sewage sludge that is treated by using this vector attraction reduction method cannot be land applied until all of the requirements under this rule are met. TCEQ has chosen not to add the additional language requested by the City of Fort Worth. No change was made as a result of this comment.

Comment

The City of Fort Worth commented that §312.82(a)(1)(B) as printed in the *Texas Register* appears to have an inadvertent typo. The City recommends removing the word "or" from subsection (a)(1)(B).

Response

The TCEQ has corrected the typo and has updated §312.82(a)(1)(B) based on the comment provided.

Comment

Renda Environmental objects to the amount of time that the sign must be posted before land application can begin and that the rule limits the flexibility of a biosolids program in a negative way for all stakeholders. Renda Environmental is concerned that if there is a perceived change in the intensity or type of odor produced creating the need to change the land application site in order to mitigate potential odor complaints, this rule will prevent that needed change from happening. In this situation, biosolids will need to be either stored or continue with land application at that site hoping that the odor conditions of the sludge will improve. Another problematic situation that can occur would be rain event occurring at a site that forces the discontinued use of that site and

the sign requirements prevent another site where there is no rain fall from being utilized because the sign was not posted three days prior. Renda Environmental believes that the rule should

simply state that a sign will be posted on days that biosolids are being land applied.

The City of Fort Worth also stated that some planned application sites must be changed on very short notice due to changing wind and weather conditions, and resulting odor concerns. When those cases arise, it is not practically possible for an operator to post the required signage within the timeframe called for by the proposed rule. Therefore, the City of Fort Worth requests that proposed §312.44(l) be revised to allow for the required sign to be posted on the day on which sewage sludge land application commences in the event of unforeseen weather conditions.

Response

The purpose of the proposed rule language requiring a sign to be posted three days prior to commencement of land application is based on numerous stakeholder comments. Landowners that live adjacent to or near sewage sludge land application sites requested to be notified of land application activity occurring near their property. In addition, signage will include contact (operator) information, and the type of sewage sludge planned to be land applied. In the event of unforeseen circumstances such as weather conditions or equipment failure the TCEQ has included additional language to §312.44(l) that would allow for the sign to be posted on the day on which sewage sludge land application commences. Records of any deviation of the posting requirements and associated reasons shall be retained by the operator and be readily available for review by a TCEQ representative.

Comment

Renda Environmental proposes that an additional 90 days of storage be allowed at storage sites. Renda Environmental requests this change because during years of prolonged wet weather, and on sites that contain cultivated fields, where access by heavy equipment performing land application is very difficult, it is very likely that 180 days will be surpassed. Renda Environmental also requests that the rule be changed to allow an additional 90 days of storage so that summer months can be used for application of stored biosolids that could not be land applied during the preceding wet winter. Renda Environmental commented that by allowing for additional 90 days of storage (270 days total), it will allow for land application and storage on sites located away from populated areas and to find larger farms that do not use the practice of cultivation.

Response

The current rule allows for storage of sewage sludge for up to 90 days with an additional 90 days of storage allowed with prior approval from the TCEQ regional office for reasons associated with application area flooding, saturated soils, or frozen soils. With proper planning, the current 180 days of storage should provide adequate time for stored material to be land applied. No change was made as a result of this comment.

Comment

Renda Environmental commented that the proposed rules involving coverage of trucks when transporting sewage sludge does not solve the problem that currently exists, as the spillage of biosolids is very uncommon. Furthermore, in the event of an accident where a truck was to turn over, a completely covered tarp would do little to prevent biosolids from spilling out of the truck.

Response

The TCEQ received numerous stakeholder comments and complaints about sewage sludge being inadvertently deposited onto public roadways throughout the state. As this is a current requirement for Class B sewage sludge that is transported to and from permitted land application sites, the TCEQ feels that it is important to require the same practice for Class A and AB bulk sewage sludge. In the unfortunate event that an accident were to happen and a truck were to turn over, the party responsible for transporting the sewage sludge must take immediate steps to collect and properly dispose of the material.

Comment

Renda Environmental strongly opposes the removal of the word "objectionable" from §312.44(j)(3)(B), and with the wording of "all odors" being used, there is no limit to what can be used against land appliers or facilities. WEAT and TACWA have also expressed concerned that removing the word "objectionable" seems unreasonable for an agricultural operation and incongruent with TCEQ Odor Complaint Procedures ("FIDO"), which set forth a methodical approach to determine when an odor meets nuisance criteria. Renda Environmental along with WEAT and TACWA requests that the wording must be left to read "objectionable" or something similar to this in reference to odors. WEAT and TACWA further recommend that the section and other sections using the term "nuisance" include language specifically tying the definition of nuisance odor to measurable criteria, such as the FIDO classification, or some other approach such as the "dilution-to-threshold" (D/T) odor measurement approach. WEAT and TACWA also have concerns regarding the proposed changes to §312.44(j)(4). WEAT and TACWA believe that the corrective action of an Odor Control Plan should only be required if triggered by exceeding a measurable threshold, such as exceeding the FIDO nuisance criteria or specified D/T and as drafted, the rules remove language regarding "significance" of an odor and are silent regarding nuisance conditions. The silence is problematic as utilities will have no way to address potential complaints regarding odor, other than to assume any complaint or odor may drive the need to develop such a plan that would seem to be the precursor to onsite capital improvements. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

During an odor complaint investigation, the TCEQ will assess the FIDO classification, in addition to other criteria such as physical effects experienced on-site, local meteorological data (estimates of wind speed, temperature, humidity, etc.), and additional concerns that may be documented on-site. FIDO provides a methodical approach for determining when an odor meets nuisance criteria and provides the process for TCEQ staff to assess these types of complaints. Upon completion of an odor investigation, the information collected is reviewed to determine whether a nuisance condition is confirmed. Because the TCEQ odor complaint guidance uses the term "offensiveness," the TCEQ is adding the word "offensive" in §312.44(j)(3)(B) when describing odor conditions that are needed to be minimized through the incorporation of sewage sludge into the soil or by taking some other type of corrective action. If the TCEQ determines that odors are continuously offensive, this could possibly trigger an Odor Control Plan.

Comment

WEAT and TACWA recommend that the TCEQ include variance language in the rules that would allow a product to move from

Class AB to Class A with sufficient demonstration that a product is stable and/or has low odors. A variance could be critical for certain sludge treatment processes that are currently on the market and that may be developed in the future. WEAT and TACWA are concerned that processes that create low odor products, but are deemed as Class AB only based on pathogen reduction - which does not necessarily correlate to odors, would be penalized. WEAT and TACWA recommend that the TCEQ provide a variance approach within the rule that allows for these products to meet the highest classification possible in the regulations. The variance approach, much like what is seen in 30 TAC §217.4 and §290.39, that allow for site-specific and product-specific evaluation, would provide the executive director with flexibility after the rules are adopted. The City of Dallas and Synagro Technologies both support WEAT and TACWA's comments.

Response

TCEQ agrees that after a sufficient demonstration that a product is stable with respect to pathogens and has equivalent odor protection as described in §312.82(a)(1)(B), and the documentation of such is submitted in writing to the executive director, a variance may be granted on a case-by-case basis. In response to this comment, the following statement was added to the end of §312.82(a)(1)(B): "Sewage sludge that meets the requirements of 30 TAC §312.82(a)(1)(A) may be classified as Class A sewage sludge if a variance request is submitted in writing that is supported by substantial documentation demonstrating equivalent methods for reducing odors and written approval is granted by the executive director."

Comment

WEAT and TACWA commented that several of the state's largest utilities are considering moving to processes that significantly reduce odor, but the capital costs to do so are expected to be $50 million to $150 million per utility. In addition to capital cost considerations, the relative costs of other management practices should be considered by the TCEQ. WEAT and TACWA are concerned that a cost increase for land application may drive utilities to landfill solids rather than invest in new processes to continue beneficial reuse and consider this to be a step backward in for Texas farmers, for drought management, and for resource recovery in the state. WEAT and TACWA also believe the rules, as proposed, include unquantifiable risks that may challenge the continuation, or future, of a number of successful beneficial reuse programs.

Response

The TCEQ agrees with WEAT and TACWA's comment on cost of wholesale changing of the large WWTP sludge process method (changing from one method to a different method). The rules are not requiring WWTPs to change their processes in order to meet the proposed requirements, but instead envisioned that each facility that has odor problems examine their sludge treatment process to determine what is the cause of the odor. No change was made as a result of this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§312.4, 312.8, 312.10 - 312.13

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code, §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and Texas Health and Safety Code, §361.121.

§312.4. Required Authorizations or Notifications.

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, or disposal of sewage sludge, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Sludge at Beneficial Use Sites), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of sewage sludge shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued in accordance with other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) Effective September 1, 2003, a permit is required for the beneficial land application of Class B sewage sludge. All registrations for the land application of Class B sewage sludge will expire on or before August 31, 2003. A person holding a registration to land apply sewage sludge who submitted an administratively complete permit application on or before September 1, 2002, may continue operations under the existing registration until final commission action on the permit application. For registrations that also authorize the use of Class A, sewage sludge, domestic septage, or water treatment plant sludge, only the provisions for the use of Class B sewage sludge will expire on August 31, 2003; the other provisions will expire on the expiration date of the registration or when a permit authorizing the use of Class A sewage sludge, domestic septage, or water treatment plant sludge is issued for the site.

(2) The effective date of a permit is the date that the executive director signs the permit.

(3) Site permit information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or whenever requested by the commission.

(4) If a permit is required under this chapter, all activities at the site under this chapter, except transportation, shall be incorporated in the permit.

(5) The commission may not issue a Class B sewage sludge permit for a land application unit that is located both in a county that borders the Gulf of Mexico and within 500 feet of any water well or surface water.

(b) Notification of certain Class A or Class AB sewage sludge land application activities.

(1) If sewage sludge meets the metal concentration limits in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits), the Class A or Class AB pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registrations), and §312.13 of this title (relating to Actions and Notice), except as provided in this subsection.

(2) Any generator in Texas or any person who first conveys sewage sludge from out of state into the State of Texas and who proposes to store, land apply, or market and distribute sewage sludge meeting the standards of this subsection shall submit notification to the executive director, at least 30 days prior to engaging in such activities for the first time on a form approved by the executive director. A completed notification form shall be submitted to the Water Quality Division by certified mail, return receipt requested. The notification must contain information detailing:

(A) sewage sludge classification, all points of generation, and wastewater treatment facility identification;

(B) name, address, telephone number, and the longitude and latitude of the site for all persons who are being proposed to receive the sewage sludge directly from the generator;

(C) a description in a marketing and distribution plan that describes any of the following activities:

(i) to sell or give away sewage sludge directly to the public, including a general description of the types of end uses proposed by persons who will be receiving the sewage sludge;

(ii) methods of distribution, marketing, handling, and transportation of the sewage sludge;

(iii) a reasonable estimate of the expected quantity of sewage sludge to be generated or handled by the person making the notification; and

(iv) a description of any proposed storage and the methods that will be employed to prevent surface water runoff of the sewage sludge or contamination of groundwater; and

(D) prior to land application, a map showing the buffer zone areas required under §312.44(c)(2)(D) and (E) of this title (relating to Management Practices) for all persons who are being proposed to receive the sewage sludge directly from the generator that meets one of the Class AB pathogen reduction requirements in §312.82(a)(2) of this title.

(3) Thirty days after the notification has occurred, the activities regulated by this subsection may commence unless the executive director determines that the activities do not meet the requirements of this subsection or an applicant's permit. After receiving a notification, the executive director may review a generator's activities or the activities of the person conveying the sewage sludge into Texas to determine whether any or all of the requirements of this chapter are necessary. In making this determination, the executive director will consider specific circumstances related to handling procedures, site conditions, or the application rate of the sewage sludge. The executive director may review a proposal for storage of sewage sludge, considering the amount of time and the amount of material described on the notification. Also, in accordance with §312.41 of this title (relating to Applicability), any reasonably anticipated adverse effect that may occur due to a metal pollutant in the sewage sludge may also be considered.

(4) Annually, on September 1, each person subject to notification of certain Class A and Class AB sewage sludge activities required by this subsection shall provide a report to the commission, which shows in detail all activities described in paragraph (2) of this subsection that occurred in the reporting period. The report must include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out-of-state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers and an updated list of persons receiving the sewage sludge. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) Effective September 1, 2003, registrations may only be obtained for the land application of Class A or Class AB sewage sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage.

(2) The effective date of the registration is the date that the executive director signs the registration in accordance with §312.12(d) of this title. Site registration information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director.

(d) Authorization. No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge unless such activity has received the prior written authorization of the commission.

§312.8. General Definitions.

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

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed from it.

(2) Active sludge unit--A sludge unit that has not closed and/or is still receiving sewage sludge.

(3) Aerobic digestion--The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

(4) Agricultural land--Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(5) Agricultural management unit--A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) Agronomic rate--The whole sludge application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(7) Anaerobic digestion--The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

(8) Annual metal loading rate--The maximum amount of a pollutant (dry weight basis) that can be applied to a unit area of land during a 365-day period.

(9) Annual whole sludge application rate--The maximum amount of sewage sludge that can be applied to a unit area of land during a 365-day period.

(10) Applied uniformly--Sewage sludge placed on the land for beneficial use such that the agronomic rate is not exceeded anywhere in the application area.

(11) Apply sewage sludge or sewage sludge applied to the land--Land application or the spraying/spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil.

(12) Aquifer--A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(13) Base flood--A flood that has a 1% chance of occurring in any given year.

(14) Beneficial use--Placement of sewage sludge onto land in a manner that complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations that the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(15) Bulk sewage sludge--Sewage sludge that is not sold or given away in a bag or other container for application to the land.

(16) Certified nutrient management specialist--An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service recognized certification program.

(17) Class A sewage sludge--Sewage sludge meeting the pathogen reduction requirements in §312.82(a)(1)(B) of this title (relating to Pathogen Reduction).

(18) Class AB sewage sludge--Sewage sludge meeting the pathogen reduction requirements in §312.82(a)(1)(A) of this title (relating to Pathogen Reduction).

(19) Class B sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title (relating to Pathogen Reduction).

(20) Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(21) Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(22) Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(23) Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(24) Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(25) Displacement--The relative movement of any two sides of a fault measured in any direction.

(26) Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal does not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(27) Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(28) Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(29) Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(30) Experimental use--Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(31) Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(32) Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(33) Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(34) Fiber crops--Crops such as flax and cotton.

(35) Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(36) Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(37) Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(38) Forest--Land densely vegetated with trees and/or underbrush.

(39) Grit trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(40) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(41) Groundwater--Water below the land surface in the saturated zone.

(42) Harvesting--Any act of cutting, picking, drying, baling, gathering, and/or removing vegetation from a field, or storing.

(43) Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(44) Incorporation--Mixing the applied material evenly through the top three inches of soil.

(45) Industrial wastewater--Wastewater generated in a commercial or industrial process.

(46) Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(47) Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(48) Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(49) Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(50) Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(51) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(52) Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners must be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners must be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(53) Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(54) Major sole-source impairment zone--A watershed that contains a reservoir that is used by a municipality as a sole source of drinking water supply for a population of more than 140,000, inside and outside of its municipal boundaries; and into which at least half of the water flowing is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended, at least in part because of concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(55) Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(56) Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(57) Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under federal Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in federal Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(58) Off-site--Property that cannot be characterized as "on-site."

(59) On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access must be by crossing the right-of-way or the right-of-way must be under the control of the person.

(60) Operator--The person responsible for the overall operation of a facility or beneficial use site.

(61) Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(62) Owner--The person who owns a facility or part of a facility.

(63) Pasture--Land that animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(64) Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(65) Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(66) Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(67) Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, ge-

netic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(68) Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(69) Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(70) Range land--Open land with indigenous vegetation.

(71) Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and\or construction sites.

(72) Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

(73) Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(74) Sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(75) Sewage sludge debris--Solid material such as rubber, plastic, glass, or other trash that may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(76) Sludge lagoon--An existing surface impoundment located on site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment must be considered an active sludge unit, as defined in this section.

(77) Sludge unit--Land that only sewage sludge is placed for disposal. A sludge unit must be used for sewage sludge. This does not include land that sewage sludge is either stored or treated.

(78) Sludge unit boundary--The outermost perimeter of a surface disposal site.

(79) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - G) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(80) Source-separated organic material--As defined in §332.2 of this title (relating to Definitions).

(81) Specific oxygen uptake rate--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(82) Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days per each staging location, prior to the land application of the sewage sludge.

(83) Store or storage--The placement of sewage sludge on land for longer than seven days.

(84) Temporary storage--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(85) Three hundred-sixty-five day period--A running total that covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(86) Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(87) Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(88) Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(89) Treatment works--Either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(90) Unstabilized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(91) Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land that the soils are subject to mass movement.

(92) Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(93) Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(94) Water treatment sludge--Sludge generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(95) Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§312.10. Permit and Registration Applications Processing.

(a) Applications for permits, registrations, or other types of approvals required by this subchapter shall be reviewed by staff for administrative completeness within 14 calendar days of receipt of the application by the executive director.

(b) Permit and registration applications must include all information required by §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registrations), or §312.142 of this title (relating to Transporter Registration).

(c) Upon receipt of an application for a permit or registration, excluding transportation registrations, the executive director shall as-

sign the application a number for identification purposes, and prepare a Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permits where applicable, which is suitable for publishing or mailing, and forward that notice to the Office of the Chief Clerk. The Office of the Chief Clerk shall notify every person entitled to notification of a particular application as described in §312.13 of this title (relating to Actions and Notice).

(d) The Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permit where applicable, must contain the information required by Chapter 39 of this title (relating to Public Notice), Texas Water Code, §5.552(c), and the approximate anticipated date of the first land application of sludge to the proposed land application unit.

(e) Nothing in this section shall be construed so as to waive the notice and processing requirements concerning the application and the draft permit in accordance with Chapter 39, Subchapters H and J of this title (relating to Applicability and General Provisions and Public Notice of Water Quality Applications and Water Quality Management Plans), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director), Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or Contested Case Hearing), or Chapter 305, Subchapters C, D, and F of this title (relating to Application for Permit or Post-Closure Order; Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits; and Permit Characteristics and Conditions) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) All permit applications for sewage sludge land application, processing, disposal, storage, or incineration are subject to the application processing procedures and requirements in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical Review; Extension; Draft Permit, Technical Summary, Fact Sheet, and Compliance History; Referral to Commission; Application Amendment; and Effect of Rules).

(g) All registration applications for Class A sewage sludge, Class AB sewage sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title.

(h) A registration or permit will be cancelled upon receipt of a written request for cancellation from either the site operator or landowner. The executive director will provide notice to the other party that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the commission and is not mandatory for cancellation.

(i) To transfer a registration or permit, both the site operator and the landowner must sign the transfer application. An application for transfer that is not signed by both the site operator and the landowner will be considered a request for cancellation.

(j) If a registration or permit for a site is cancelled, a complete application for registration or permit must be submitted in order to reauthorize the site. If the application is approved, the site will be authorized under the same site registration or permit number.

(k) For permits, a major amendment is defined in Chapter 305, Subchapter D of this title. For purposes of this chapter concerning registrations and except as provided in subsection (l) of this section, a major amendment for a registration is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration or a substantive change in the information provided in an application for registration. Changes to registrations that are not considered major include, but are not limited to, typographical errors, changes that result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the executive director will process as a minor amendment a request by an existing permittee or registrant to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration that implemented prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title are not applicable to a minor amendment for a registration.

(m) Term limits for registrations or permits may not exceed five years.

§312.11. Permits.

(a) The provisions of this section set the standards and requirements for permit applications to land apply, process, store, dispose of, or incinerate sewage sludge. Any information provided under this subsection must be submitted in quadruplicate form.

(b) Any person who is required to obtain or who requests a new permit or an amendment, modification, or renewal of a permit under this section is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data). For a land application permit, the applicant must be:

(1) the owner of the application site, if the sewage sludge was generated outside this state; or

(2) the site operator, if the sewage sludge was generated in this state.

(c) A permit application must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Applications Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit or Post-Closure Order), and must also include the following:

(1) the map required by §305.45(a)(6) of this title that provides the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land located:

(i) within 1/4 mile of the site to be permitted, as such information can be determined from the current county tax rolls at the time the application is filed, or other reliable sources, for Class B sewage sludge beneficial land use permit applications submitted on or after September 1, 2003, or applications submitted before September 1, 2003, but not administratively complete by the commission by that date;

(ii) within 1/2 mile of the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, for a sewage sludge incineration or disposal permit application; and

(iii) adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, at the time the application is filed for a domestic septage Class B sewage sludge beneficial use land application, or sewage sludge processing or storage facility;

(C) the source(s) of the information for the surrounding property owners; and

(D) the list of property owners. The list must be provided both as a hard copy, either on the map or as an attached list, and in electronic format or on four sets of self-adhesive mailing labels; and

(2) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity.

(d) A permit application for land application of Class B sewage sludge must also include the following information:

(1) the information listed in §312.12(b)(1)(A) - (C) of this title (relating to Registrations);

(2) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(A) samples taken from the zero to six-inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample taken from each United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used; and

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(3) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(A) separate samples taken from the zero to six-inch and from the six to 24-inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample taken from each USDA NRCS soil type (soils with the same characterization or texture), unless an alternate method is used;

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(4) information necessary to identify the hydrological characteristics of the surface water and groundwater within 1/4 mile of the site to be permitted;

(5) except for applications by political subdivisions, proof of a commercial liability insurance policy and an environmental impairment policy or a similar policy in accordance with Chapter 37, Subchapter V of this title (relating to Financial Assurance for Class B Sewage Sludge for Land Application Units); and

(6) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sewage sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the NRCS Practice Standard Code 590.

(e) A permittee of a Class B sewage sludge land application site shall comply with the requirements of Chapter 37, Subchapter V of this title.

(f) Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126 of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(g) If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information must be provided orally or by facsimile transmission (fax) to the appropriate regional office within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information must also be provided by the permit holder to the regional office and to the Enforcement Division at the commission's Central Office (Mail Code 224) within five working days of becoming aware of the noncompliance. The written submission must contain the following information:

(1) a description of the noncompliance and its cause;

(2) the potential danger to human health, safety, or the environment;

(3) the period of noncompliance, including exact dates and times;

(4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(h) Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.

(i) Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendments), §305.63 of this title (relating to Renewal), §305.64 of this title (relating to Transfer of Permits), §305.65 of this title (relating to Renewal), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension).

(j) The permittee shall immediately provide written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods.

(k) For land application sites located in a major sole-source impairment zone, the permittee is subject to the following provisions.

(1) The operator shall have a nutrient management plan (nitrogen and phosphorus) prepared by a certified nutrient management specialist in accordance with the USDA NRCS Practice Standard Code 590;

(2) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million of extractable phosphorus (reported as P) in the zero to six-inch sample for a particular land application field or if ordered by the commission in order to protect the quality of water in the state, then the operator may not apply any sewage sludge to the affected area unless the land application is implemented in accordance with a detailed nutrient utilization plan (NUP) that has been approved by the commission.

(3) A NUP is equivalent to the NRCS Nutrient Management Plan Practice Standard Code 590. The nutrient management plan, based on crop removal, must be developed and certified by one of the following individuals or entities:

(A) an employee of the NRCS;

(B) a nutrient management specialist certified by the NRCS;

(C) the Texas State Soil and Water Conservation Board;

(D) Texas Cooperative Extension;

(E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas;

(F) a professional agronomist certified by the American Society of Agronomy;

(G) a certified professional soil scientist certified by the Soil Science Society of America; or

(H) a licensed Texas geoscientist-soil scientist, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner.

(4) After a NUP is implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below 200 parts per million in the zero to six-inch sample. Thereafter, the operator shall implement the requirements of the nutrient management plan.

(5) The buffer zones must be maintained according to the applicable requirements specified in §312.44(c) of this title (relating to Management Practices).

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER B. LAND APPLICATION FOR BENEFICIAL USE AND STORAGE AT BENEFICIAL USE SITE

30 TAC §§312.41, 312.42, 312.44, 312.45, 312.47, 312.50

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

These amendments are also adopted under TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code, §361.121, which gives the TCEQ the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and Texas Health and Safety Code, §361.121.

§312.41. Applicability.

(a) Application to land. This subchapter applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied.

(b) Bulk sewage sludge.

(1) When bulk sewage sludge is applied to the land and meets the metal concentrations in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits), the Class A sewage sludge pathogen requirements in §312.82(a)(3) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), then the provisions of §312.42 of this title (relating to General Requirements) and §312.44 of this title (relating to Management Practices) do not apply with the exception of §312.44(a), (b), (h)(3), (j), and (m) of this title.

(A) When bulk sewage sludge that meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class AB pathogen requirements in §312.82(a)(2) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title, is applied to the land, then §312.44(a), (b), (c)(2)(D) and (E), (d), (h)(1), (3), (5) and (6), (j), (l), and (m) of this title will apply to the land application of sewage sludge.

(B) When bulk sewage sludge that meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class AB pathogen requirements in §312.82(a)(2) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) in addition to (9) or (10) of this title, then the requirements in subparagraph (A) of this paragraph do not apply with the exception of §312.44(a), (b), (h)(3), (j), and (m) of this title.

(2) The executive director may apply any or all of §312.42 and §312.44 of this title to the bulk sewage sludge described in this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any metal in the bulk sewage sludge.

(c) General Requirements for Bulk Derived Materials.

(1) When derived material from sewage sludge is applied to the land and meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class A pathogen requirements in §312.82(a)(3) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title, then the provisions of §312.42 and §312.44 of this title do not apply with the exception of §312.44(a), (b), (h)(3), (j), and (m) of this title.

(A) When bulk sewage sludge that meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class AB pathogen requirements in §312.82(a)(2) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title is applied to the land, then §312.44(a), (b), (c)(2)(D) and (E), (d), (h)(1), (3), (5), and (6), (j), (l), and (m) of this title will apply to the land application of sewage sludge.

(B) When bulk sewage sludge that meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class AB pathogen requirements in §312.82(a)(2) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) in addition to (9) or (10) of this title, is applied to the land, then the requirements in subsection (b)(1)(A) of this section do not apply with the exception of §312.44(a), (b), (h)(3), (j), and (m) of this title.

(2) The executive director may apply any or all of §312.42 and §312.44 of this title to the bulk material described in this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any metal in the bulk sewage sludge.

(d) Special Requirements for Certain Bulk Derived Materials. The requirements in this subchapter may not apply when a bulk material derived from sewage sludge is applied to the land; if the sewage sludge from which the bulk material is derived meets the metal concentrations in Table 3 of §312.43(b)(3) of this title the Class A or Class AB pathogen requirements in §312.82(a) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title. The executive director may apply any or all of §312.42 and §312.44 of this title to the bulk derived material on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any metal in the sewage sludge.

(e) Bagged sludge. Sewage sludge sold or given away in a bag or other container for application to the land. Section 312.42 and §312.44 of this title may not apply when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other container for application to the land meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class A or Class AB pathogen requirements in §312.82(a) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title.

(f) Bagged derived materials. Section 312.42 and §312.44 of this title may not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the metal concentrations in §312.43(b) of this title, the Class A or Class AB pathogen requirements in §312.82(a) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title.

(g) Bagged materials. The requirements in this subchapter may not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class A or Class AB pathogen requirements in §312.82(a) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title.

§312.42. General Requirements.

(a) No person shall apply sewage sludge, including domestic septage, to the land except in accordance with the requirements in this subchapter.

(b) No person shall apply sewage sludge that does not meet the metal concentrations in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits) to land where any of the cumulative metal loading rates in Table 2 of §312.43(b)(2) of this title have been reached.

(c) No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period where the annual application rate in §312.43(c) of this title has been reached.

(d) The person who applies sewage sludge, including domestic septage, to the land shall obtain information needed to comply with the requirements in this subchapter.

(e) If a treatment works provides bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the treatment works shall provide the person who applies the bulk sewage sludge to the land notice and necessary information to comply with the requirements in this subchapter.

(f) If a treatment works provides bulk sewage sludge to a person who prepares the bulk sewage sludge for application to the land, the treatment works shall provide the person who prepares the bulk sewage sludge for application to the land notice and necessary information to comply with the requirements in this subchapter.

(g) The person who applies bulk sewage sludge to the land shall provide the owner or lease-holder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this subchapter.

(h) If a treatment works provides sewage sludge to a person who prepares the sewage sludge for sale or give away in a bag or other container for application to the land, the treatment works shall provide the person who prepares the sewage sludge for sale or give away in a bag or other container for application to the land notice and information to comply with the requirements in this subchapter.

(i) The applicant shall determine the concentration of regulated metals in accordance with §312.12(b)(1)(I) of this title (relating to Registrations) and demonstrate to the satisfaction of the commission that the proposed cumulative metal loading will result in a non-toxic condition or reduce the toxicity of the existing soil.

§312.44. Management Practices.

(a) Land application of bulk sewage sludge must not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species.

(b) Bulk sewage sludge must not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other water in the state, except as provided in a permit issued under Chapter 305 of this title (relating to Consolidated Permits) or federal Clean Water Act, §404.

(c) When bulk sewage sludge that does not meet Class A pathogen requirements or domestic septage is applied to agricultural land, forest, or a reclamation site, buffer zones must be established for each application area as noted in this section unless otherwise specified by the commission.

(1) Surface water:

(A) 200-foot buffer zone, if the sludge is not incorporated; for land application sites located in a major sole-source impairment zone this buffer zone must maintain a vegetative cover; or

(B) 33-foot vegetative buffer zone, if the sludge is incorporated.

(2) Other buffer zones:

(A) 150 feet, private water supply well;

(B) 500 feet, public water supply well, intake, spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank;

(C) 200 feet, solution channel, sinkhole, or other conduit to groundwater;

(D) 750 feet, established school, institution, business, or occupied residential structure;

(E) 50 feet, public right-of-way and property boundaries; and

(F) 10 feet, irrigation conveyance canal.

(d) Any of the buffers established in subsection (c)(2)(D) and (E) of this section may be reduced or eliminated if an agreement to that effect is signed by the owners of the established school, institution, business, occupied residential structure, or adjacent property and this documentation is provided to the executive director prior to issuance of a permit or registration. Reductions or elimination of buffer zones in an existing permit or registration by agreement of the affected landowner will be considered a minor amendment of the permit or registration.

(e) Bulk sewage sludge must be applied to agricultural land, forest, or a public contact site at a whole sludge application rate that is equal to or less than the agronomic rate for the agricultural land, forest, or public contact site on which the bulk sewage sludge is applied.

(f) Bulk sewage sludge must be applied to a reclamation site at a whole application rate that is equal to or less than the agronomic rate for the reclamation site on which the bulk sewage sludge is applied, unless otherwise specified by the commission. On a case-by-case basis, a whole sludge application rate may exceed the agronomic rate for a specific time period.

(g) Groundwater protection measures.

(1) A seasonal high groundwater table must be not less than three feet below the treatment zone for soils with moderate or slower permeability (less than two inches per hour).

(2) A seasonal high groundwater table must be not less than four feet below the treatment zone for soils with moderately rapid or rapid permeability (greater than two inches per hour and less than 20 inches per hour).

(3) Seasonal generally refers to a groundwater table that may be perched on a less permeable soil or geologic unit and fluctuates with seasonal climatic variation or that occurs in a soil or geologic unit as a variation in saturation due to seasonal climatic conditions and is identified as such in a published soil survey report or similar document.

(4) Application of sludge to land having soils with greater permeability and with higher groundwater tables will be considered on a case-by-case basis, after consideration of soil pH, metal loadings onto the soil, soil buffering capacity, or other protective measures to prevent groundwater contamination.

(h) Sludge must be applied by a method and under conditions that prevent runoff of sewage sludge beyond the active application area and protect the quality of the surface water and the soils in the unsaturated zone.

(1) Sludge must be applied uniformly over the surface of the land.

(2) Sludge may not be applied to areas where permeable surface soils are less than two feet thick. The executive director will consider sites with thinner permeable surface soils, on a case-by-case basis.

(3) Sewage sludge may not be applied during rainstorms or during periods in which surface soils are water-saturated, and when pooling of water is evident on the land application site. The operator of a TCEQ permitted or bulk sewage sludge site subject to the notification requirements in §312.4(b) of this title (relating to Required Authorizations or Notifications) who land applies sewage sludge on agricultural land shall submit an Adverse Weather and Alternative Plan. This plan shall detail procedures to address times when the sewage sludge cannot be applied to the land application site due to adverse weather or other conditions such as wind, precipitation, field preparation delays, and access road limitations.

(4) Sludge may not be applied to areas having topographical slopes in excess of 8.0%. On a case-by-case basis, the executive director will consider sites with steeper slopes when runoff controls are proposed and utilized, incorporation of sewage sludge into the soil occurs, or for certain reclamation projects.

(5) Where runoff of sludge from the active application area is evident, the operator shall cease further sludge application until the condition is corrected.

(6) Sewage sludge may not be applied under provisions of this section on land within a designated floodway.

(i) Either a label must be affixed to the bag or other container in which sewage sludge is sold or given away for application to the land or an information sheet must be provided to the person who receives sewage sludge sold or given away in another container for application to the land. The label or information sheet must contain the following information:

(1) the name and address of the person who prepared the sewage sludge for sale or given away in a bag or other container for application to the land;

(2) a statement that prohibits the application of the sewage sludge to the land except in accordance with the instructions on the label or information sheet; and

(3) the annual whole sludge application rate for the sewage sludge that does not cause the annual metal loading rates in Table 4 of §312.43(b)(4) of this title (relating to Metal Limits) to be exceeded.

(j) Nuisance controls.

(1) A land application site location must be selected and the site operated in a manner to prevent public health nuisances.

(2) Sewage sludge debris must be prevented from blowing or running off site boundaries or into surface waters.

(3) To prevent nuisance conditions from occurring, the operator shall:

(A) minimize dust migration from the site and access roadways;

(B) minimize offensive odors through incorporation of sewage sludge into the soil or by taking some other type of corrective action; and

(C) develop and implement best management practices (BMPs) to minimize off-site tracking of sewage sludge and sediment during the transport of sewage sludge material to and from the land application site or storage area; and to include at a minimum, removing tracked material, to the extent practicable, by the end of each day of operation at the site and either returning it to the site or otherwise disposing of it properly. The documented BMPs shall be retained by the operator and made by readily available for review by a TCEQ representative.

(4) Odor Control. Pursuant to the authority vested in the commission or executive director in §312.6 of this title (relating to Additional or More Stringent Requirements), a person who prepares sewage sludge or land applies sewage sludge on agricultural land may be subject to an Odor Control Plan on a case-by-case basis.

(k) A permit or registration must specify the soil testing requirements for each application area.

(1) The testing frequency must take into account common agricultural methods of determining cover crop nutrient needs, soil pH, phytotoxicity, and concentrations of metals regulated by this chapter.

(2) No authorization may require soil testing of metals regulated by this chapter, at a frequency greater than once per five years or prior to submittal of a renewal application for a beneficial use site. Soil testing for metals regulated by this chapter may not be required for portions of the authorized site where sewage sludge has not been applied since the last soil metals testing was performed.

(3) Paragraph (2) of this subsection does not apply if the executive director becomes aware of circumstances warranting increased monitoring of metals regulated by this chapter, in order to address sites where metal loading into the soil is a threat to human health or environmental quality.

(l) An operator of a Class AB or Class B sewage sludge site shall post a sign that is visible from a publically accessible road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a sewage sludge beneficial land application site is located on the premises. The sign shall be posted three days prior to and 14 days after the commencement of land application of sewage sludge and shall include the operator name, telephone number, the classification of sewage sludge and the TCEQ authorization number. In the event of reasonably unforeseen circumstances such as weather conditions or equipment failure that necessitate a change in a planned land application site, the required sign may be posted on the day on which sewage sludge land application commences. If signs are posted less than three days prior to land application, records shall be maintained documenting the unforeseeable circumstance that necessitated the change in a planned land application site. Such records shall be retained by the operator and be readily available for review by a TCEQ representative. Records of any deviation of the posting requirements listed in this subsection and associated reasons shall be retained by the operator and be readily available for review by a TCEQ representative.

(m) All vehicles and equipment used for the transport of bulk Class A, Class AB or Class B sewage sludge for land application or disposal shall be constructed, operated, and maintained to prevent the loss of liquid or solid materials during transport. An operator of a Class A, Class AB or Class B bulk sewage sludge site may not accept bulk sewage sludge, unless the sludge is transported to the land application unit in a covered container with the covering firmly secured at the front and back.

§312.47. Record Keeping.

(a) Sewage sludge.

(1) The person who prepares the sewage sludge in §312.41(b)(1) or (e) of this title (relating to Applicability) shall develop the following information and shall retain the information for five years:

(A) the concentration of each metal listed in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits) in the sewage sludge;

(B) the following certification statement: "I certify, under penalty of law, that the Class A (or insert Class AB) sewage sludge pathogen requirements in 30 TAC §312.82(a) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 30 TAC §312.83(b)(1) - (8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(C) a description of how the Class A or Class AB sewage sludge pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met; and

(D) a description of how one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction) is met.

(2) The person who derives the material in §312.41(c)(1) or (f) of this title shall develop the following information and shall retain the information for five years:

(A) the concentration of each metal listed in Table 3 of §312.43(b)(3) of this title in the material;

(B) the following certification statement: "I certify, under penalty of law, that the Class A (or insert Class AB) sewage sludge pathogen requirements in 30 TAC §312.82(a) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 30 TAC §312.83(b)(1) - (8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(C) a description of how the Class A or Class AB sewage sludge pathogen requirements in §312.82(a) of this title are met; and

(D) a description of how one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title is met.

(3) If the metal concentrations in Table 3 of §312.43(b)(3) of this title, the Class A or Class AB sewage sludge pathogen requirements in §312.82(a) of this title, and the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each metal listed in Table 3 of §312.43(b)(3) of this title in the bulk sewage sludge;

(ii) the following certification statement: "I certify, under penalty of law, that the pathogen requirements in 30 TAC §312.82(a) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(iii) a description of how the pathogen requirements in §312.82(a) of this title are met.

(B) The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the following certification statement: "I certify, under penalty of law, that the management practices in 30 TAC §312.44 and the vector attraction reduction requirement in (insert either 30 TAC §312.83(b)(9) or (10)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including fine and imprisonment";

(ii) a description of how §312.44 of this title (relating to Management Practices) are met for each site on which bulk sewage sludge is applied; and

(iii) a description of how the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title are met for each site on which bulk sewage sludge is applied.

(4) If the metal concentrations in Table 3 of §312.43(b)(3) of this title and the Class B pathogen requirements in §312.82(b) of this title are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each metal listed in Table 3 of §312.43(b)(3) of this title in the bulk sewage sludge;

(ii) the following certification statement: "I certify under, penalty of law, that the Class B sewage sludge pathogen requirements in 30 TAC §312.82(b) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 30 TAC §312.83(b)(1) - (8) if one of those requirements is met) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(iii) a description of how the Class B sewage sludge pathogen requirements in §312.82(b) of this title are met; and

(iv) when one of the vector attraction reduction requirements in §312.83(b)(1) - (8) of this title is met, a description of how the vector attraction reduction requirement is met.

(B) The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the following certification statement: "I certify, under penalty of law, that the management practices in 30 TAC §312.44, the site restrictions in 30 TAC §312.82(b)(3), and the vector attraction reduction requirements in (insert either 30 TAC §312.83(b)(9) or (10), if one of those requirements is met) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices and site restrictions (and the vector attraction reduction requirements if applicable) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(ii) a description of how §312.44 of this title are met for each site on which bulk sewage sludge is applied;

(iii) a description of how the site restrictions in §312.82(b)(3) of this title are met for each site on which bulk sewage sludge is applied; and

(iv) when the vector attraction reduction requirement in either §312.83(b)(9) or (10) of this title is met, a description of how the vector attraction reduction requirement is met.

(5) If the requirements in §312.43(a)(2)(A) of this title are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each metal listed in Table 1 of §312.43(b)(1) of this title in the bulk sewage sludge;

(ii) the following certification statement: "I certify, under penalty of law, that the pathogen requirements in (insert either 30 TAC §312.82(a) or (b)) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 30 TAC §312.83(b)(1) - (8) if one of those requirements is met) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(iii) a description of how the pathogen requirements in either §312.82(a) or (b) of this title are met;

(iv) when one of the vector attraction requirements in §312.83(b)(1) - (8) of this title is met, a description of how the vector attraction requirement is met.

(B) The person who applies the bulk sewage sludge shall develop the following information, retain the information in clauses (i) - (vii) of this subparagraph indefinitely, and retain the information in clause (viii) - (xiii) of this subparagraph, for five years:

(i) the location, by either street address or latitude and longitude, of each site on which bulk sewage sludge is applied;

(ii) the number of acres in each site on which bulk sewage sludge is applied;

(iii) the date and time bulk sewage sludge is applied to each site;

(iv) the cumulative amount of each metal (i.e., kilograms) listed in Table 2 of §312.43(b)(2) of this title in the bulk sewage sludge applied to each site, including the amount in §312.42(e) of this title (relating to General Requirements);

(v) the amount of sewage sludge (i.e., metric tons) applied to each site;

(vi) the following certification statement: "I certify, under penalty of law, that the requirements to obtain information in 30 TAC §312.42(e) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements to obtain information have been met. I am aware that there are significant penalties for false certification including fine and imprisonment";

(vii) a description of how the requirements to obtain information in §312.42(e) of this title are met;

(viii) the following certification statement: "I certify, under penalty of law, that the management practices in 30 TAC §312.44 have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment";

(ix) a description of how §312.44 of this title are met for each site on which bulk sewage sludge is applied;

(x) the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in §312.82(b) of this title: "I certify, under penalty of law, that the site restrictions in 30 TAC §312.82(b)(3) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site restrictions have been met. I am aware that there are significant penalties for false certification including fine and imprisonment";

(xi) a description of how the site restrictions in §312.82(b)(3) of this title are met for each site on which Class B bulk sewage sludge is applied;

(xii) the following certification statement when the vector attraction reduction requirement in either §312.83(b)(9) or (10) of this title is met: "I certify, under penalty of law, that the vector attraction reduction requirement in (insert either 30 TAC §312.83(b)(9) or (10)) has been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the vector attraction reduction requirement has been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment"; and

(xiii) if the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title are met, a description of how the requirements are met.

(6) If the requirements in §312.43(a)(4)(B) of this title are met when sewage sludge is sold or given away in a bag or other container for application to the land, the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(A) the annual whole sludge application rate for the sewage sludge that does not cause the annual metal loading rates in Table 4 of §312.43(b)(4) of this title to be exceeded;

(B) the concentration of each metal listed in Table 4 of §312.43(b)(4) of this title in the sewage sludge;

(C) the following certification statement: "I certify, under penalty of law, that the management practice in 30 TAC §312.44(e), the Class A (or insert Class AB) sewage sludge pathogen requirement in 30 TAC §312.82(a), and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in §312.83(b)(1) - (8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practice, pathogen requirements, and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(D) a description of how the Class A or Class AB sewage sludge pathogen requirements in §312.82(a) of this title are met;

(E) a description of how one of the vector attraction requirements in §312.83(b)(1) - (8) of this title is met.

(b) Domestic septage. When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

(1) the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

(2) the number of acres in each site on which domestic septage is applied;

(3) the date and time domestic septage is applied to each site;

(4) the nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

(5) the rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

(6) The following certification statement: "I certify, under penalty of law, that the pathogen requirements in (insert either 30 TAC §312.82(c)(1) or (2)) and the vector attraction reduction requirements in (insert 30 TAC §312.83(b)(9), (10), or (12)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment";

(7) a description of how the pathogen requirements in either §312.82(c)(1) or (2) of this title are met;

(8) a description of how the vector attraction reduction requirements in §312.83(b)(9), (10), or (12) of this title are met.

§312.50. Storage and Staging of Sludge at Beneficial Use Sites.

(a) Except as provided in subsection (b) of this section, storage of sludge at a beneficial land application site must not exceed 90 days. Storage is allowed only when the following requirements are carried out.

(1) Written authorization must be obtained from the executive director prior to construction of the storage area.

(2) The storage area must be operated and maintained to prevent surface water runoff and to prevent a release to groundwater. Discharge of storm water or wastewater which has come into contact with sewage sludge is prohibited. The storage area shall be designed to collect such runoff. Any runoff collected during the storage of sewage sludge shall be disposed in a manner to prevent a release to groundwater.

(3) The storage area shall be designed, constructed, and operated in a manner which protects public health and the environment.

(4) The storage area must be lined to prevent a release to groundwater. Natural or artificial liners are required for leachate control. A natural liner or equivalent barrier of one foot of compacted clay with a permeability coefficient of 1×10^{-7} cm/sec or less must be provided. Various flexible synthetic membrane lining materials may be used in lieu of soil liners if prior written approval has been obtained from the executive director. The registrant shall furnish certification by a licensed professional engineer or licensed professional geoscientist that the completed storage area lining meets the appropriate criteria described in this section prior to using the facilities. The certification shall be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

(5) The application shall outline measures to be taken to minimize vectors and to avoid public health nuisances such as odors.

(6) The storage area shall be fenced or other methods shall be used, if necessary to control access by humans or domestic animals.

(7) Berms or dikes shall be constructed to contain the waste without leakage.

(8) Liquid sludge must be stored in an enclosed vessel.

(9) Processing of sludge is prohibited unless a permit is obtained from the commission.

(10) In the event a person who prepares sewage sludge that is applied to the land or who applies sewage sludge to the land, is subject to an Odor Control Plan as described in §312.44(j)(4) of this title (relating to Management Practices), that person must comply with the terms of the applicable Odor Control Plan in order to store sewage sludge at a beneficial use site.

(b) Up to an additional 90 days of storage will be allowed with the prior approval of the appropriate Texas Commission on Environmental Quality regional office, for reasons associated with application area flooding, saturated soils, or frozen soils.

(c) Staging of sewage sludge on-site, prior to land application, is allowable without executive director approval. Staging of sewage sludge may only occur for a maximum of seven calendar days per location within the beneficial land application site. Up to an additional 14 days of staging sewage sludge will be allowed with the prior approval of the appropriate Texas Commission on Environmental Quality regional office, for reasons associated with application area flooding, saturated soils, frozen soils, or equipment failure. Written records of the location of each staging area and timeframe in which sewage sludge was staged shall be retained by the operator and be readily available for review by a TCEQ representative. The operator shall stage the sewage sludge away from odor receptors in order to:

(1) prevent off-site dust migration from the staging area; and

(2) prevent nuisance odors.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER C. SURFACE DISPOSAL

30 TAC §312.65

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its

responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendment is also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code, §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and Texas Health and Safety Code, §361.121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PATHOGEN AND VECTOR ATTRACTION REDUCTION

30 TAC §§312.81 - 312.83

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code, §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and Texas Health and Safety Code, §361.121.

§312.82. Pathogen Reduction.

(a) Sewage sludge--Class A and Class AB.

(1) Compliance requirements--Class A and Class AB.

(A) For sewage sludge to be classified as Class AB with respect to pathogens, the requirements in subparagraphs (C) and (D) of this paragraph and the requirements of one of the alternatives listed in paragraph (2) of this subsection must be met.

(B) For sewage sludge to be classified as Class A with respect to pathogens, the requirements in subparagraphs (C) and (D) of this paragraph and the requirements of one of the alternatives listed in paragraph (3) of this subsection must be met. Sewage sludge that meets the requirements of subparagraph (A) of this paragraph may be classified a Class A sewage sludge if a variance request is submitted in writing that is supported by substantial documentation demonstrating equivalent methods for reducing odors and written approval is granted by the executive director. The executive director may deny the variance request or revoke that approved variance if it is determined that the variance may potentially endanger human health or the environment, or create nuisance odor conditions.

(C) The requirements of the chosen alternative for pathogen reduction from paragraphs (2) and (3) of this subsection must be met prior to or at the same time as the vector attraction reduction requirements, except the requirements in §312.83(b)(6) - (8) of this title (relating to Vector Attraction Reduction).

(D) Either the density of fecal coliform in the sewage sludge must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella (sp. bacteria) in the sewage sludge must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(2) Compliance alternatives--Class AB.

(A) Alternative 2. The temperature and pH of the sewage sludge that is used or disposed of must be maintained at specific values for periods of time.

(i) The pH of the sewage sludge must be raised to above 12 and must remain above 12 for 72 hours.

(ii) The temperature of the sewage sludge must be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(iii) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge must be air dried to achieve a percent solids in the sewage sludge greater than 50%.

(B) Alternative 3. The sewage sludge that is used or disposed of must be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(ii) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(iii) After the enteric virus reduction in clause (ii) of this subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (ii) of this subparagraph.

(iv) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(v) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(vi) After the viable helminth ova reduction in clause (v) of this subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (v) of this subparagraph.

(C) Alternative 4. The sewage sludge that is used or disposed of must be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) The density of enteric viruses in the sewage sludge must be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title.

(ii) The density of viable helminth ova in the sewage sludge must be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title.

(3) Compliance alternatives--Class A.

(A) Alternative 1. The temperature of the sewage sludge that is used or disposed of must be maintained at a specified value for a period of time.

(i) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge must be 50 degrees Celsius or higher; the time period must be 20 minutes or longer; and the temperature and time period must be determined using the equation in this clause, except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.
Figure: 30 TAC §312.82(a)(3)(A)(i)

(ii) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge must be 50 degrees Celsius or higher, the time period must be 15 seconds or longer, and the temperature and time period must be determined using the equation in clause (i) of this subparagraph.

(iii) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must be determined using the equation in clause (i) of this subparagraph.

(iv) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50 degrees Celsius or higher; and the time period is 30 minutes or longer, the temperature and time period must be determined using the equation in this clause.
Figure: 30 TAC §312.82(a)(3)(A)(iv)

(B) Alternative 5 (Processes to Further Reduce Pathogens (PFRP)). Sewage sludge that is used or disposed of must be treated in one of the PFRP described in 40 Code of Federal Regulations (CFR) Part 503, Appendix B.

(C) Alternative 6 (PFRP Equivalent). Sewage sludge that is used or disposed of must be treated in a process that has been approved by the United States Environmental Protection Agency (EPA) as being equivalent to those in subparagraph (B) of this paragraph.

(b) Sewage sludge--Class B.

(1) Compliance requirements--Class B.

(A) For a sewage sludge to be classified as Class B with respect to pathogens, the requirements in subparagraphs (B) and (C) of this paragraph must be met. As an alternative for a sewage sludge to be classified as Class B, the requirements of subparagraph (B) of this paragraph and paragraph (2) of this subsection must be met.

(B) The site restrictions in paragraph (3) of this subsection must be met when sewage sludge that is classified as Class B with respect to pathogens is applied to the land for beneficial use.

(C) A minimum of seven representative samples of the sewage sludge must be collected within 48 hours of the time that the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge. The geometric mean of the density of fecal coliform for the samples collected must be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony-forming Units per gram of total solids (dry weight basis).

(2) Processes to Significantly Reduce Pathogens (PSRP) compliance alternatives--Class B. Sewage sludge that is used or disposed of must be treated in one of the PSRP described in 40 CFR Part 503, Appendix B, or must be treated by an equivalent process approved

by the EPA, so long as all of the following requirements are met by the generator of the sewage sludge.

(A) Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in subparagraph (F) of this paragraph.

(B) An independent Texas registered professional engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification must include a statement indicating that the design meets all the applicable standards specified in 40 CFR Part 503, Appendix B.

(C) Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the PSRP at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and recordkeeping requirements must be in accordance with established EPA final guidance.

(D) All certification records and operational records describing how the requirements of this paragraph were met must be kept by the generator for a minimum of three years and be available for inspection by commission staff for review.

(E) In lieu of a generator obtaining a certification as specified in subparagraph (B) of this paragraph, the executive director will accept from the EPA a finding of equivalency to the defined PSRP.

(F) If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product must meet one of the PSRP, and meet the certification, operation, and recordkeeping requirements of this paragraph.

(3) Site restrictions.

(A) Food crops with harvested parts totally above the land surface that touch the sewage sludge/soil mixture must not be harvested from the land for at least 14 months after the application of sewage sludge.

(B) Food crops with harvested parts below the surface of the land must not be harvested for at least 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

(C) Food crops with harvested parts below the surface of the land must not be harvested for at least 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to the incorporation into the soil.

(D) Food crops, feed crops, and fiber crops must not be harvested for at least 30 days after application of sewage sludge.

(E) Animals must not be allowed to graze on the land for at least 30 days after application of sewage sludge.

(F) Turf grown on land where sewage sludge is applied may not be harvested for at least one year after application of sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

(G) Public access to land with a high potential for public exposure must be restricted for at least one year after application of sewage sludge.

(H) Public access to land with a low potential for public exposure must be restricted for at least 30 days after application of the sewage sludge.

(c) Domestic septage.

(1) The site restrictions in subsection (b)(3) of this section must be met if domestic septage is applied to agricultural land, forest, or a reclamation site.

(2) The pH of domestic septage applied to agricultural land, forest, or a reclamation site must be raised to 12 or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for a period of 30 minutes.

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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Robert Martinez
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.2, §367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §367.2 and §367.3, concerning Continuing Education, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5136). The amended rules will not be republished.

The amendments will add a new category of obtaining continuing education credit for educators and will clarify the continuing education audit.

The amendment to §367.2 will allow educators to claim up to ten hours of continuing education credit for the creation of a new course at or through an accredited college or university. The amendment to §367.3 eliminates the need for licensees to sign on a renewal form that they have completed their continuing education requirement as most licensees complete their renewal online.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2014.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission (Commission) files this notice of intent to review Chapter 307, Proceedings Before the Commission, and Chapter 323, Disciplinary Action and Enforcement. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

The review shall assess whether the reasons for initially adopting the rules within each chapter continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule reviews may be submitted in writing to Mary Welch, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register.*

Any proposed changes to the rules within Chapters 307 and 323 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201404391
Mark Fenner
General Counsel
Texas Racing Commission
Filed: September 15, 2014

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 68, relating to the Elimination of Architectural Barriers program. The Notice of Intent to Review was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4276). The public comment period closed on June 30, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Elimination of Architectural Barriers program under Texas Government Code, Chapter 469, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Government Code, Chapter 469. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements and the fees that are specific to this program. The Department received public comments in response to the Notice of Intent to Review from seven interested parties.

One comment suggested repealing the rules because they are redundant with conventional building codes. One comment strongly opposed repealing the rules because of the protection it provides to the disabled. One comment believes the rules favor the disabled more than practical users of the facilities. One comment suggested correcting a typo in the rules. One comment recommends removing the Americans with Disabilities Act from architect's law. One comment believes the rules are obsolete and the program is currently not meeting its intended objective. One comment suggests adding language that corresponds with the Department of Justice rules. All comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on August 20, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 68, Elimination of Architectural Barriers, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 68, Elimination of Architectural Barriers.

TRD-201404381
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 15, 2014

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 87, Used Auto-

motive Parts Recyclers. The Notice of Intent to Review was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4276). The public comment period closed on June 30, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Used Automotive Parts Recyclers program under Texas Occupations Code, Chapter 2309, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 2309, Used Automotive Parts Recyclers. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules detail the responsibilities of the licensee, applications and the fees that are specific to this program. The Department received public comments in response to the Notice of Intent to Review from one interested party.

One commenter requested clarity on the rights of the salvage vehicle dealer license compared to a used automotive parts recyclers license; however, the issue raised is within the jurisdiction of the Texas Department of Motor Vehicles.

At its meeting on August 20, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 87, Used Automotive Parts Recyclers, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 87, Used Automotive Parts Recyclers.

TRD-201404384
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 15, 2014

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 88, relating to the Polygraph Examiners program. The Notice of Intent to Review was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4277). The public comment period closed on June 30, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Polygraph Examiners program under Texas Occupations Code, Chapter 1703, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1703. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, applications, and the fees that are specific to this program. The Department did not receive any public comments in response to the Notice of Intent to Review.

At its meeting on August 20, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 88, Polygraph Examiners, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 88, Polygraph Examiners.

TRD-201404382
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 15, 2014

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 94, relating to the Property Tax Professionals program. The Notice of Intent to Review was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4278). The public comment period closed on June 30, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Property Tax Professionals program under Texas Occupations Code, Chapter 1151, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1151. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules detail the registration requirements, code of ethics, and the fees that are specific to this program. The Department received public comments in response to the Notice of Intent to Review from one interested party.

The interested party would like to have the continuing education requirements reviewed in detail, specifically the length and curriculum. This comment will be taken under consideration as part of any possible rule changes in the future.

At its meeting on August 20, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 94, Property Tax Professionals, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 94, Property Tax Professionals.

TRD-201404383

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 15, 2014

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission has completed its reviews of Chapter 313, Officials and Rules of Horse Racing, and Chapter 315, Officials and Rules for Greyhound Racing. These reviews were conducted pursuant to Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

Notice of the rule reviews was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7479). During the review, the Commission proposed and adopted amendments to 16 TAC §313.103 and §313.110.

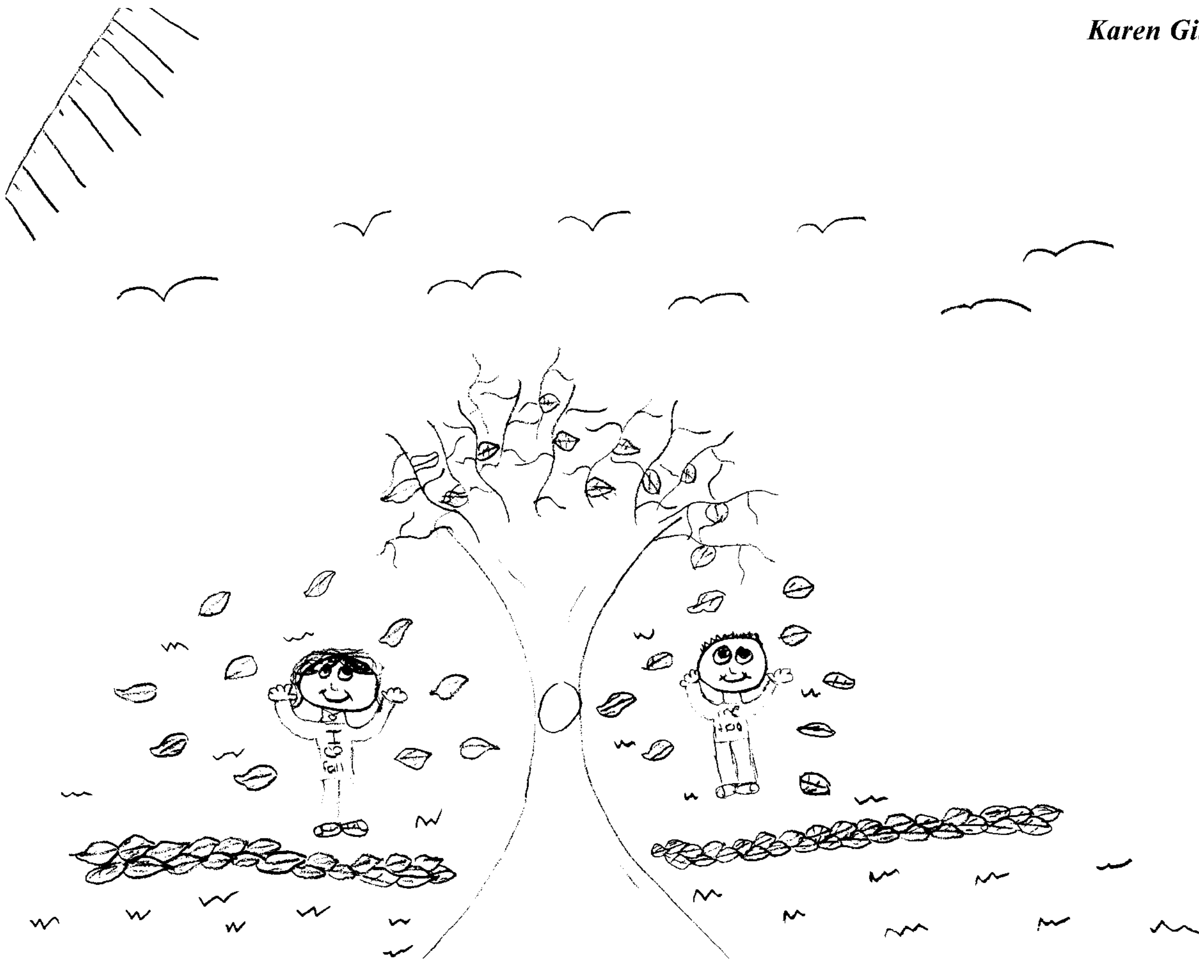
The commission received no comments on the rule reviews in response to the notice other than the comments received in response to individual rule proposals.

The commission has determined that the reasons for initially adopting each rule within the chapters continue to exist and readopts the chapters with the amended rules as referenced above.

This completes the review of 16 TAC Part 8, Chapters 313 and 315.

TRD-201404396
Mark Fenner
General Counsel
Texas Racing Commission
Filed: September 15, 2014

Karen Gil



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §78.6(a)

Schedule of Fees							
	Fee Description	**Board Fee**	**Professional Fee (78th Leg)**	**Texas Online**	**Patient Protection**	**Newsletter Fee**	**Total Fee**
1.	DC Initial Application (includes $50 transcript verification)	$208.00	$200.00	$0.00	$0.00	$0.00	$408.00
2.	DC Jurisprudence Examination (Repeat Exam)	$148.00	$200.00	$0.00	$0.00	$0.00	$348.00
3.	DC Initial License - Prorated	$148.00	$0.00	$0.00	$5.00	$0.00	$153.00
4.	DC License Renewal - On Time	$148.00	$200.00	$5.00	$1.00	$8.00	$362.00
5.	DC License Renewal - Late under 90 days	$215.50	$200.00	$5.00	$1.00	$8.00	$429.50
6.	DC License Renewal - Late 90 days to 1 year	$283.00	$200.00	$5.00	$1.00	$8.00	$497.00
7.	DC License Renewal - Late up to 3 Years for Good Cause	Calculated	Calculated	$0.00	$0.00	$8.00	Calculated
8.	DC License Reinstatement - Out of State	$148.00	$200.00	$0.00	$0.00	$0.00	$348.00
9.	DC License - Inactive License Processing	$80.00	$0.00	$0.00	$0.00	$0.00	$80.00
10.	DC License - Reactivate from Inactive Status	$148.00	$200.00	$5.00	$1.00	$8.00	$362.00
11.	DC License - Duplicate Copy (Replacement)	$25.00	$0.00	$0.00	$0.00	$0.00	$25.00
12.	DC Annual Certificate – Duplicate Copy (Replacement)	$10.00	$0.00	$0.00	$0.00	$0.00	$10.00
13.	Facility Registration - Initial Registration	$75.00	$0.00	$0.00	$5.00	$0.00	$80.00
14.	Facility Registration Renewal – On Time	$70.00	$0.00	$2.00	$1.00	$0.00	$73.00
15.	Facility Registration Renewal - Late under 90 days	$120.00	$0.00	$4.00	$1.00	$0.00	$125.00
16.	Facility Registration Renewal - Late 90 days to one year	$170.00	$0.00	$5.00	$1.00	$0.00	$176.00
17.	Facility Registration - Duplicate Copy (Replacement)	$25.00	$0.00	$0.00	$0.00	$0.00	$25.00
18.	Radiologic Technician Initial Registration	$35.00	$0.00	$0.00	$0.00	$0.00	$35.00
19.	Radiologic Technician Annual Renewal	$35.00	$0.00	$0.00	$1.00	$0.00	$36.00
20.	Continuing Education Course Approval Fee (annual)	$200.00	$0.00	$0.00	$0.00	$0.00	$200.00
21.	TBCE Online Jurisprudence CE Course	$55.00	$0.00	$0.00	$0.00	$0.00	$55.00
22.	Certification of DC license (to another state board)	$25.00	$0.00	$0.00	$0.00	$0.00	$25.00
23.	Verification of DC license (not	$2.00	$0.00	$0.00	$0.00	$0.00	$2.00

	certification letter) + postage						
24.	Verification of Educational Courses/Grades	$50.00	$0.00	$0.00	$0.00	$0.00	$50.00
25.	Printed copy of Statutes and Rules	$10.00	$0.00	$0.00	$0.00	$0.00	$10.00
26.	Returned Check Fee	$25.00	$0.00	$0.00	$0.00	$0.00	$25.00
27.	College Faculty License - Original	$150.00	$0.00	$0.00	$0.00	$0.00	$150.00
28.	College Faculty License - Renewal	$135.00	$0.00	$0.00	$0.00	$0.00	$135.00
29.	Criminal History Letter Fee	$150.00	$0.00	$0.00	$0.00	$0.00	$150.00

Figure: 22 TAC §78.8(a)

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Enforcement Division

COMPLAINT FORM

333 Guadalupe, Ste 3-825
Austin, TX 78701

(512) 305-6700 phone
(512) 305-6705 fax

Notice. Except for the name of the chiropractor or facility, all information requested is voluntary, but failure to provide the requested information may delay or prevent the investigation of your complaint. As much information as possible should be provided in connection with the complaint. The information on this form will be used in part to determine whether a violation of the Chiropractic Act or Board rules has occurred.

PERSON MAKING COMPLAINT		
	FULL NAME	HOME PHONE
	BUSINESS NAME (*IF APPLICABLE*)	WORK PHONE
	STREET ADDRESS	FAX NUMBER
	CITY STATE ZIP	EMAIL

CHIROPRACTOR OR FACILITY COMPLAINT IS ABOUT		
	FULL NAME (CHIROPRACTOR OR OWNER OF FACILITY)	LICENSE NUMBER (IF KNOWN)
	FACILITY NAME	WORK PHONE
	STREET ADDRESS	
	CITY STATE ZIP	

NATURE OF COMPLAINT (check all that apply)		
☐ Quality of Care	☐ Records Release	☐ Practicing Beyond Scope
☐ Insurance Fraud	☐ Substance Abuse	☐ Unsure
☐ Excessive Treatment or Charges	☐ Billing for Services not Rendered	☐ Other ____________
☐ Unprofessional Conduct	☐ Sexual Misconduct	____________
☐ Misdiagnosis	☐ Impairment/Medical Condition	____________
☐ Poor Record Keeping	☐ Advertising	____________
☐ Solicitation of Patients	☐ Billing Practices	____________
☐ Unsanitary Conditions	☐ Unlicensed Practice	____________

WITNESS INFORMATION		
	WITNESS, IF ANY	**WITNESS, IF ANY**
	WITNESS NAME PHONE NO.	WITNESS NAME PHONE NO.
	ADDRESS	ADDRESS
	CITY ST ZIP	CITY ST ZIP
	If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN	If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN

ADDITIONAL INFORMATION

IF AN ATTORNEY IS INVOLVED, COMPLETE THIS SECTION			IF SECOND OPINION RECEIVED, COMPLETE THIS SECTION		
ATTORNEY NAME		PHONE NO.	PRACTITIONER NAME		PHONE NO.
ADDRESS			ADDRESS		
CITY	ST	ZIP	CITY	ST	ZIP

HAVE YOU CONTACTED THE CHIROPRACTOR OR FACILITY CONCERNING YOUR COMPLAINT?

☐ YES ☐ NO

WHEN: ____________________

HOW:

☐ Telephone ☐ Letter

☐ Other (please specify) ____________________

DID CHIROPRACTOR OR FACILITY RESPOND?

☐ YES ☐ NO

Action taken ____________________

HAVE YOU COMPLAINED TO ANY OTHER ORGANIZATION?

☐ YES ☐ NO

WHO: ____________________

WHEN: ____________________

HOW:

☐ Telephone ☐ Letter

☐ Other (please specify) ____________________

DID ORGANIZATION RESPOND?

☐ YES ☐ NO

Action taken ____________________

DETAILS OF COMPLAINT

STATE YOUR COMPLAINT

PLEASE WRITE LEGIBLY. USE A SEPARATE COMPLAINT FORM FOR EACH INDIVIDUAL PRACTITIONER. PROVIDE CLEAR AND CONCISE INFORMATION SUCH AS: THE SEQUENCE OF EVENTS SURROUNDING YOUR COMPLAINT, DATES OF TREATMENTS OR INCIDENTS, AND COPIES (DOCUMENTS WILL NOT BE RETURNED) OF ALL RELEVANT DOCUMENTS REGARDING YOUR COMPLAINT (LETTERS, CORRESPONDENCE, WITNESS STATEMENTS, CONTRACTS, POLICE REPORTS, BILLS, OR PHOTOGRAPHS). IF MORE SPACE IS NEEDED, PLEASE USE ADDITIONAL PAPER.

PLEASE RETURN TO:	I ATTEST THAT ALL STATEMENTS MADE BY ME IN RELATION TO THIS COMPLAINT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I ACKNOWLEDGE THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS MAY PROVIDE A COPY OF THIS FORM TO THE PERSON AGAINST WHOM THE COMPLAINT IS MADE. I AGREE TO TESTIFY IN ANY HEARINGS THAT MAY ARISE AS A RESULT OF THIS COMPLAINT. I UNDERSTAND THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS DOES NOT REPRESENT CITIZENS SEEKING THE RETURN OF THEIR MONEY OR OTHER PERSONAL REMEDIES OR HAVE JURISDICTION OVER BUSINESS/INSURANCE MATTERS.
Texas Board of Chiropractic Examiners 333 Guadalupe, Ste 3-825 Austin, TX 78701 (512) 305-6705 fax	SIGNATURE ____________________ DATE __________

Please sign the release below. Failure to sign the release may result in a delay of the investigation of your complaint

RELEASE OF INFORMATION AUTHORIZATION

I hereby authorize any person, including, but not limited to, hospitals, institutions, health care providers, clinics, employers (past and present), laboratories, attorneys, insurance companies, government agencies, or other public or private agencies to release to the Texas Board of Chiropractic Examiners, its representatives, agents or employees any and all information about me, including documents, reports, records files, testimony or any other documents regardless of form or content.

PATIENT NAME: ______________________________ DATE OF BIRTH: ______________

SIGNATURE OF PATIENT (Parent or, legal guardian, if applicable):

______________________________ DATE: ______________

If filled out by someone other than complaintant, please provide the name and contact information of the person (s) who assisted in filling out this form. Name/Contact information______________________________

Figure: 22 TAC §78.10

MAXIMUM SANCTIONS TABLE

CATEGORY I. 1st Offense: $1000* 2nd Offense: $1000* 3rd Offense: $1000* *and/or revocation	
Violation	**Reference:**
Practicing without a chiropractic license	22 TAC §78.9(d) CA §201.301
Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §75.2(c)(6) and (e) CA §§201.301, 201.351, 201.354(f)
Practicing with an expired license (nonrenewal)	22 TAC §75.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing while on inactive status	22 TAC §75.4(f) CA §§201.301, 201.311(b)(2)
Practicing in non-compliance with continuing education requirements	22 TAC §§75.5, 75.6(g) CA §§201.301, 201.354(f)
Improper control of patient care and treatment	22 TAC §73.4(c)
Grossly unprofessional conduct	22 TAC §78.1 CA §201.502(a)(7)
Lack of diligence/gross inefficient practice	22 TAC §78.2 CA §201.502(a)(18)
Practicing outside the scope of practice of chiropractic	22 TAC §§78.2, 78.17 CA §§ 201.002, 201.502(a)(1) and (18)
Performing radiologic procedures without registering, with an expired registration, or without DSHS approval; failure to renew (including non-payment of fees)	22 TAC §74.2(a), (d), (h)
MRTCA, DSHS rules or order	22 TAC §74.2(h), (j), (o)
Performing (1) radiologic procedures without supervision, or (2) cineradiography or other restricted procedure	22 TAC §74.2(g), (k), (l), (m)
Permitting a non-registered or non-DSHS approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §74.2(k), (n)
Delegating to a non-licensee authority to perform adjustments or manipulations	22 TAC §77.5(a)
Failure to supervise a student	22 TAC §77.5(b)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §77.5(d)
Failure to comply with the CA, other law or a board order or rule	22 TAC §78.9(c) CA §§201.501, 201.502(a)(1)
Failure to comply with down-time restrictions	22 TAC §78.9(f)
Medicaid fraud	CA §201.502(a)(2), (7); HRC §§36.002, 36.005

Solicitation	Occ. Code §§102.001, 102.006
Default on Student Loan	Occ. Code Chapter 56 22 TAC §77.6
Failure to comply with requirements/restrictions on prepaid treatment plans	22 TAC §77.12
Failure to respond to board inquiries	22 TAC §§75.3(1)(C), 78.3(h), 78.5, 77.7(g)
Failure to report criminal conviction	22 TAC §78.3(f)
Other statutory violations	CA §201.502(a)(2) - (8), (10), (12) - (17), (19) - (20)
CATEGORY II. 1st Offense: $500 2nd Offense: $750* 3rd Offense: $1000* *and/or suspension	
Violation	**Reference**
Submitting an untrue continuing education certification	22 TAC §75.5(1)(E) CA §201.502(a)(2)
Operating a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §§73.2(a), 73.3(e), 73.4(a)
Practicing in a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §73.2(k)
Unauthorized disclosure of patient records	22 TAC §77.7 CA §§201.402, 201.405
Overtreating/overcharging a patient	22 TAC §78.1(a)(4) HPCA §101.203
Deceptive advertising and other prohibited advertising	22 TAC §77.2 CA §201.502(a)(2), (9), (11); HPCA §101.201
CATEGORY III. 1st Offense: $250 2nd Offense: $500* 3rd Offense: $1000* *and/or suspension	
Violation	**Reference**
Failure to furnish patient records Overcharging for copies of patient records	22 TAC §77.7 CA §201.405(f)
Failure to disclose charges to patient	22 TAC §§78.1(a)(6), 77.3(a) HPCA §101.202
Failure to submit to medical examination	22 TAC §77.7(h)
Failure to maintain patient records	22 TAC §77.8
CATEGORY IV. 1st Offense: $250 2nd Offense: $500 3rd Offense: $1000	
Violation	**Reference**
Failure to display public interest information Displaying an invalid license or renewal card	22 TAC §§78.6(d), (e), 78.7 CA §201.502(a)(2), (9)
Failure to complete CRT continuing education	22 TAC §74.2(i)
CATEGORY V. 1st Offense: $250 2nd Offense: $400 3rd Offense: $500	
Violation	Reference
Failure to report change of address	22 TAC §75.1
Failure to report change of facility address/ownership	22 TAC §73.4(d)

Failure to report *locum tenens* information	22 TAC §75.2(b)
Use of the term "physician," "chiropractic physician"	CA §201.502(a)(22)
Failure to use "chiropractor," "D.C." in advertising	22 TAC §78.1(a)(2)

Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	$555
Veterinary Special License	$555
Veterinary Provisional License	$605
Veterinary Temporary License	$300
Equine Dental Provider License	$200
Veterinary Technician License	$70

(b) LICENSE RENEWALS

(1) Current License Renewals

Type Of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	$170	$200	$370
Veterinary Special License	$165	$200	$365
Veterinary Inactive License	$170	$0	$170
Equine Dental Provider License	$205	$0	$205
Equine Dental Provider Inactive License	$105	$0	$105
Veterinary Technician Regular License	$51	$0	$51
Veterinary Technician Inactive License	$28	$0	$28

(2) Expired License Renewals – Less Than 90 Days Delinquent

Type Of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	$250	$200	$450
Veterinary Special License	$245	$200	$445
Veterinary Inactive License	$250	$0	$250
Equine Dental Provider License	$305	$0	$305
Equine Dental Provider Inactive License	$155	$0	$155
Veterinary Technician Regular License	$74	$0	$74
Veterinary Technician Inactive License	$40	$0	$40

(3) Expired License Renewals – Greater Than 90 Days and Less Than 1 Year Delinquent

Type Of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	$331	$200	$531
Veterinary Special License	$326	$200	$526
Veterinary Inactive License	$331	$0	$331
Equine Dental Provider License	$405	$0	$405
Equine Dental Provider Inactive License	$205	$0	$205
Veterinary Technician Regular License	$97	$0	$97
Veterinary Technician Inactive License	$51	$0	$51

(c) SPECIALIZED LICENSE CATEGORIES

Type Of License	Total Fee
Veterinary Reinstatement	$370
Veterinary Re-Activation	$225
Equine Dental Provider Re-Activation	$25
Veterinary Technician Re-Activation	$25

(d) OTHER FIXED FEES AND CHARGES
(1) Criminal History Evaluation Letter: $32
(2) Returned Check Fee: $25
(3) Duplication of License: $40
(4) Open Records Requests: Charges for all open records and other goods/services such as tapes and discs, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information)
(5) Application Processing for Board Approval of Equine Dental Provider Certifying Entities: $1500

Figure: 30 TAC §312.82(a)(3)(A)(i)

$$D > \frac{131{,}700{,}000}{10^{0.1400t}}$$

D = time in days

t = temperature in degrees Celsius

Figure: 30 TAC §312.82(a)(3)(A)(iv)

$$D > \frac{50{,}070{,}000}{10^{0.1400t}}$$

D = time in days

t = temperature in degrees Celsius

Figure: 31 TAC §65.175

State-Listed Threatened Species in Texas

MAMMALS

Louisiana Black Bear (*Ursus americanus luteolus*)
Black Bear (*Ursus americanus*)
White-nosed Coati (*Nasua narica*)
Southern Yellow Bat (*Lasiurus ega*)
Spotted bat (*Euderma maculatum*)
Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*)
Texas Kangaroo Rat (*Dipodomys elator*)
Coues' Rice Rat (*Oryzomys couesi*)
Palo Duro Mouse (*Peromyscus truei comanche*)
Gervais' Beaked Whale (*Mesoplodon europaeus)*
Goose-beaked Whale (*Ziphius cavirostris*)
Pygmy Sperm Whale (*Kogia breviceps*)
Dwarf Sperm Whale (*Kogia simus*)
Killer Whale (*Orcinus orca*)
False Killer Whale (*Pseudorca crassidens*)
Short-finned Pilot Whale (*Globicephala macrorhynchus*)
Pygmy Killer Whale (*Feresa attenuata*)
Atlantic Spotted Dolphin (*Stenella frontalis*)
Rough-toothed Dolphin (*Steno bredanensis*)

BIRDS

Bald Eagle (*Haliaeetus leucocephalus*)
Common Black-hawk (*Buteogallus anthracinus*)
Gray Hawk *(Buteo plagiatus)*
White-tailed Hawk (*Buteo albicaudatus*)
Zone-tailed Hawk (*Buteo albonotatus*)
Peregrine Falcon (*Falco peregrinus anatum*)
Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)
Mexican Spotted Owl (*Strix occidentalis lucida*)
Piping Plover (*Charadrius melodus*)
Reddish Egret (*Egretta rufescens*)
White-faced Ibis (*Plegadis chihi*)
Wood Stork (*Mycteria americana*)
Swallow-tailed Kite (*Elanoides forficatus*)
Sooty Tern *(Onychoprion fuscatus)*
Northern Beardless-tyrannulet(*Camptostoma imberbe*)
Rose-throated Becard (*Pachyramphus aglaiae*)
Tropical Parula *Setophaga pitiayumi*

Bachman's Sparrow *(Peucaea aestivalis)*
Texas Botteri's Sparrow *(Peucaea botterii texana)*
Arizona Botteri's Sparrow *(Peucaea botterii arizonae)*

REPTILES
Green Sea Turtle (*Chelonia mydas*)
Loggerhead Sea Turtle (*Caretta caretta*)
Alligator Snapping Turtle (*Macrochelys temminckii*)
Cagle's Map Turtle (*Graptemys caglei*)
Chihuahuan Mud Turtle (*Kinosternon hirtipes murrayi*)
Texas Tortoise (*Gopherus berlandieri*)
Reticulated Gecko (*Coleonyx reticulatus*)
Reticulate Collared Lizard (*Crotaphytus reticulatus*)
Texas Horned Lizard (*Phrynosoma cornutum*)
Mountain Short-horned Lizard (*Phrynosoma hernandesi*)
Scarlet Snake (*Cemophora coccinea copei, C. c. lineri*)
Black-striped Snake (*Coniophanes imperialis*)
Texas Indigo Snake (Drymarchon melanurus)
Speckled Racer *Drymobius margaritiferus*)
Northern Cat-eyed Snake (*Leptodeira septentrionalis septentrionalis*)
Louisiana Pine Snake (*Pituophis ruthveni)*
Brazos Water Snake (*Nerodia harteri*)
Smooth Green Snake (*Liochlorophis vernalis*)
Trans-Pecos Black-headed Snake (*Tantilla cucullata*)
Chihuahuan Desert Lyre Snake (*Trimorphodon vilkinsonii*)
Timber (Canebrake) Rattlesnake (*Crotalus horridus*)

AMPHIBIANS
San Marcos Salamander (*Eurycea nana*)
Cascade Caverns Salamander (*Eurycea latitans*)
Comal Blind Salamander (*Eurycea tridentifera*)
Blanco Blind Salamander (*Eurycea robusta*)
Black-spotted Newt (*Notophthalmus meridionalis*)
South Texas Siren (large form) (*Siren* sp.1)
Mexican Tree Frog (*Smilisca baudinii*)
White-lipped Frog (*Leptodactylus fragilis*)
Sheep Frog (*Hypopachus variolosus*)
Mexican Burrowing Toad (*Rhinophrynus dorsalis*)

FISHES
Shovelnose Sturgeon (*Scaphirhynchus platorynchus*)
Paddlefish (*Polyodon spathula*)
Mexican Stoneroller (*Campostoma ornatum*)

Rio Grande Chub (*Gila pandora*)
Blue Sucker (*Cycleptus elongatus*)
Creek Chubsucker (*Erimyzon oblongus*)
Toothless Blindcat (*Trogloglanis pattersoni*)
Widemouth Blindcat (*Satan eurystomus*)
Conchos Pupfish (*Cyprinodon eximius*)
Pecos Pupfish (*Cyprinodon pecosensis*)
Rio Grande Darter (*Etheostoma grahami*)
Blackside Darter (*Percina maculata*)
Opossum Pipefish (*Microphis brachyurus*)
River Goby (*Awaous banana*)
Mexican Goby (*Ctenogobius claytonii*)
San Felipe Gambusia (*Gambusia clarkhubbsi*)
Blotched Gambusia (*Gambusia senilis*)
Devils River Minnow (*Dionda diaboli*)
Arkansas River Shiner (*Notropis girardi)*
Bluehead Shiner (*Pteronotropis hubbsi*)
Chihuahua Shiner (*Notropis chihuahua*)
Bluntnose Shiner (*Notropis simus*)
Proserpine Shiner (*Cyprinella proserpina*)

MOLLUSCS
False spike (*Quadrula mitchelli*)
Golden orb (*Quadrula aurea*)
Louisiana Pigtoe (*Pleurobema ridellii*)
Mexican fawnsfoot (*Truncilla cognata*)
Salina mucket (*Potamilus metnecktayi*)
Sandbank pocketbook (*Lampsilis satura*)
Smooth pimpleback (*Quadrula houstonensis*)
Southern hickorynut (*Obovaria jacksoniana*)
Texas fatmucket (*Lampsilis bracteata*)
Texas fawnsfoot (*Truncilla macrodon*)
Texas heelsplitter (*Potamilus amphichaenus*)
Texas hornshell (*Popenaias popeii*)
Texas pigtoe (*Fusconaia askewi*)
Texas pimpleback (*Quadrula petrina*)
Triangle pigtoe (*Fusconaia lananensis*)

Figure: 31 TAC §65.176

Endangered Species

MAMMALS
Mexican long-nosed Bat (*Leptonycteris nivalis*)
Jaguar (*Panthera onca*)
Jaguarundi (*Herpailurus* (=*Felis*) *yagouaroundi cacomii*)
West Indian Manatee (*Trichecus manatus*)
Ocelot (*Leopardus* (=*Felis*) *pardalis*)
Finback Whale (*Balaenoptera physalus*)
Humpback Whale (*Megaptera novaeangliae*)
Gray Wolf (*Canis lupus*)
Red Wolf (*Canis rufus*)

BIRDS
Whooping Crane (*Grus americana*)
Eskimo Curlew (*Numenius borealis*)
Northern Aplomado Falcon (*Falco femoralis septentrionalis*)
Southwestern Willow Flycatcher (*Empidonax traillii extimus*)
Attwater's Prairie-chicken (*Tympanuchus cupido attwateri*)
Interior Least Tern (*Sternula antillarum athalassos)*
Black-capped Vireo (*Vireo atricapilla*)
Golden-cheeked Warbler (*Setophaga chrysoparia*)
Red-cockaded Woodpecker (*Picoides borealis*)

REPTILES
Hawksbill Sea turtle (*Eretmochelys imbricata*)
Kemp's Ridley Sea turtle (*Lepidochelys kempii*)
Leatherback Sea turtle (*Dermochelys coriacea*)

AMPHIBIANS
Austin blind salamander (*Eurycea waterlooensis*)
Barton Springs Salamander (*Eurycea sosorum*)
Texas blind Salamander (*Typhlomolge rathbuni*)
Houston Toad (*Anaxyrus houstonensis*)

FISHES
Fountain Darter (*Etheostoma fonticola*)
Big Bend Gambusia (*Gambusia gaigei*)
Clear Creek Gambusia (*Gambusia heterochir*)
Pecos Gambusia (*Gambusia nobilis*)
San Marcos Gambusia (*Gambusia georgei*)

Rio Grande Silvery Minnow (*Hybognathus amarus*)
Comanche Springs Pupfish (*Cyprinodon elegans*)
Leon Springs Pupfish (*Cyprinodon bovinus*)
Smalltooth Sawfish (*Pristis pectinata*)

MOLLUSCS
Pecos Assiminea Snail (*Assiminea pecos*)

CRUSTACEA
Peck's Cave Amphipod (*Stygobromus (=Stygonectes) pecki*)

AQUATIC ANIMALS
Comal Springs riffle beetle (*Heterelmis comalensis*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Diminutive amphipod (*Gammarus hyalleloides*)
Pecos amphipod (*Gammarus pecos*)
Diamond tryonia (*Pseudotryonia adamantina*)
Phantom springsnail (*Pyrgulopsis texana*)
Phantom tryonia (*Tryonia cheatumi*)
Gonzales tryonia (*Tryonia circumstriata*)

Figure: 31 TAC §69.8(a)

ENDANGERED NATIVE PLANTS

CACTI
star cactus (*Astrophytum asterias*)
Nellie cory cactus (*Escobaria minima*)
Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)
black lace cactus (*Echinocereus reichenbachii* var. *albertii*)
Davis' green pitaya (*Echinocereus davisii*)
Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)

TREES, SHRUBS, AND SUBSHRUBS
Johnston's frankenia (*Frankenia johnstonii*)
Walker's manioc (*Manihot walkerae*)
Texas snowbells (*Styrax platanifolius ssp. texanus*)

WILDFLOWERS
large-fruited sand verbena (*Abronia macrocarpa*)
South Texas ambrosia (*Ambrosia cheiranthifolia*)
Texas ayenia (*Ayenia limitaris*)
Texas poppy mallow (*Callirhoe scabriuscula*)
Terlingua Creek cat's-eye (*Cryptantha crassipes*)
slender rush-pea (*Hoffmannseggia tenella*)
Texas prairie dawn (*Hymenoxys texana*)
white bladderpod (*Physaria pallida*)
Texas trailing phlox (Phlox nivalis ssp. texensis)
Texas golden gladecress (*Leavenworthia texana*)
ashy dogweed (*Thymophylla tephroleuca*)
Zapata bladderpod (*Physaria thamnophila)*

ORCHIDS
Navasota ladies'-tresses (*Spiranthes parksii*)

GRASSES AND GRASS-LIKE PLANTS
Little Aguja pondweed (*Potamogeton clystocarpus*)
Texas wild-rice (*Zizania texana*)

Figure: 31 TAC §69.8(b)

THREATENED NATIVE PLANTS

CACTI

Bunched cory cactus (*Coryphantha ramillosa* ssp. *ramillosa*)

Chisos Mountains hedgehog cactus (*Echinocereus chisoensis* var. *chisoensis*)

Lloyd's mariposa cactus (*Sclerocactus mariposensis*)

TREES, SHRUBS, AND SUBSHRUBS

Hinckley's oak (*Quercus hinckleyi*)

WILDLFLOWERS

Pecos Sunflower (*Helianthus paradoxus*)

Tinytim (*Geocarpon minimum*)

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - August 2014

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period August 2014 is $76.10 per barrel for the three-month period beginning on May 1, 2014, and ending July 31, 2014. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of August 2014 from a qualified low-producing oil lease is not eligible for exemption from the crude 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 August 2014 is $3.41 per mcf for the three-month period beginning on May 1, 2014, and ending July 31, 2014. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2014 from a qualified low-producing well is eligible for a 25% 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 August 2014 is $96.08 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 August 2014 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 August 2014 is $3.90 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 August 2014 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201404360
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 11, 2014

Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Spot-tailed Earless Lizard ("RFP 207h"):

University of Texas at Austin, 10100 Burnet Road, PRC176/R4000, Austin, Texas 78758-4445.

The total maximum amount of the contract is $233,530.63. The term of the contract is June 23, 2014, through December 31, 2016.

The notice of issuance was published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 509).

TRD-201404435
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 17, 2014

Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Western Chicken Turtle ("RFP 209d"):

Texas A&M AgriLife Research, a member of the Texas A&M University System, 1500 Research Parkway A110, 2260 TAMU, College Station, Texas 77843-2260.

The total maximum amount of the contract is $199,993.00. The term of the contract is September 15, 2014, through December 31, 2016.

The notice of issuance was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3477).

TRD-201404437
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 17, 2014

Notice of Hearing on Administrative Rule §3.334 - Local Sales and Use Taxes

The Office of the Comptroller of Public Accounts will hold a hearing to take public comments on proposed Administrative Rule §3.334 found in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O, on Wednesday, October 15, 2014, from 9:00 a.m. until 3:00 p.m., in Room 1.111 of the William B. Travis Building, Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis. The proposed section was published in the May 30, 2014, issue of the *Texas Register*.

The purpose of this hearing is to receive comments from interested persons, pursuant to Government Code, §2001.029.

The comptroller received written comments on the proposed section. In advance of the hearing, the comptroller is providing notice of the following changes to the proposed section, which are based upon the written comments received. First, the definition of "purchasing office"

provided in subsection (a)(14) will be revised to follow more closely the language of Tax Code, §321.002(a)(3)(B). In addition, subsection (e)(4)(C), which identified certain factors the comptroller may consider when deciding whether a purchasing office is a place of business, will be deleted and STAR Accession No. 200704372L (April 12, 2007) will be superseded. In response to concerns raised about combination retail stores and warehouse or distribution centers, the comptroller will delete subsection (e)(2)(C) and (D) and the section will expressly state that such locations will be treated as a single place of business. STAR Accession No. 200508201L (August 3, 2005) will be superseded.

The written comments also raised concerns about subsections (g)(1) and (2) of the proposed section, addressing sellers' local use tax collection obligations. Proposed subsection (g)(1) would impact only those Texas sellers who have a place of business in a locality with a total local sales tax rate of less than 2.0% and who ship orders to other Texas locations that have enacted different types of local sales taxes. The comptroller understands, however, that the impact on those sellers could be substantial. Further, the comptroller appreciates that the Legislature imposed a similar local tax collection requirement in 2003 that it subsequently repealed in 2007. See House Bill 3319, 80th Legislature, 2007. As stated in the preamble to the proposed section, there is no statutory basis for the current requirement that limits a seller's local tax collection obligations to those jurisdictions where the seller is "engaged in business," and the comptroller has determined that the statements in the current sections of this title that limit out-of-state sellers' local tax collection obligations to the jurisdictions in which they are engaged in business are in error. See, for example, §3.253(d). After careful review of the written comments, the comptroller determined that it is not administratively feasible to require Texas sellers who collect local sales tax to collect any additional local use tax that may be due. Subsection (g)(1) will be revised to limit those sellers' local tax collection obligations to the collection of local sales tax, or local use tax, but not both. Corresponding revisions will be made to subsection (i) of the proposed section.

Written comments were also provided on several issues that the comptroller continues to deliberate. A complete description of those comments, and the comptroller's responses, will be provided in the preamble to the adoption of this section.

In addition, the comptroller is seeking public comment during the hearing on the following provisions of the proposed section: subsection (a)(15), defining the term "receive," and subsection (e)(4)(D), concerning the provision of "significant business services" by a purchasing office. The comptroller determined that it is necessary to define the term "receive," which appears in the Tax Code, and which is subject to multiple interpretations. Recommendations regarding the proposed definition of the term in subsection (a)(15) are invited. In addition, the comptroller determined that it is necessary to define the phrase "significant business services," which appears in §321.002(a)(3)(B) and §323.002(a)(3)(B), but is not defined therein. The comptroller's proposed interpretation is provided in proposed subsection (e)(4)(D); specific comments on this proposal are also invited.

Questions concerning the hearing or this notice should be referred to Teresa G. Bostick, Manager, Tax Policy Division, by phone at (512) 305-9952 or by e-mail to Teresa.Bostick@cpa.state.tx.us.

TRD-201404434
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 17, 2014

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/22/14 - 09/28/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/22/14 - 09/28/14 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/14 - 10/31/14 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/14 - 10/31/14 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201404419
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 16, 2014

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from InTouch Credit Union (Plano) seeking approval to merge with New Mount Zion Baptist Church Credit Union (Dallas), with InTouch Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201404428
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2014

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from InvesTex Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a 10-mile radius of the InvesTex Credit Union office located at: One Allen Center

Downtown - 500 Dallas, Suite P-110, Houston, Texas 77002; to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201404427
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2014

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Amend Articles of Incorporation - Approved

Tarrant County Credit Union, Fort Worth, Texas - See *Texas Register* issue dated July 25, 2014.

TRD-201404429
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 17, 2014

Education Service Center Region 10

Request for Applications

Texas Support for Homeless Education Program (TEXSHEP), School Years 2015-2016, 2016-2017, and 2017-2018.

Filing Date. September 17, 2014.

Filing Authority. The availability of subgrant funds under Request for Applications RFA #ESCR-10/H2015-17 is authorized by the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, Public Law 107-110.

Eligible Applicants. The Region 10 Education Service Center (ESC) is requesting applications from school districts, shared services arrangements, regional education service centers, open enrollment charter schools, and county departments of education to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description. Applicants should describe plans to provide tutoring, counseling, social work services, transportation, and other assistance that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include data on the impact of the project on the identification, enrollment, school attendance, and the academic success of homeless students.

Dates of Project. The Texas Support for Homeless Education Program subgrants are funded in three-year competitive subgrant cycles. The first year of the next cycle will be implemented during the 2015 - 2016 school year. Applicants should plan for a starting date no earlier than September 1, 2015.

Project Amount. Approximately $4.7 million will be provided for an unspecified number of projects; the number of projects will depend on the number of applicants. Project subgrant awards will range up to $225,000 and are dependent upon the number of homeless students and the percentage of homeless students in the districts to be served. Project funding in the second and third years will be based on satisfactory progress of the first- and second-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, the state legislature, and the availability of funding. This project is funded 100% from McKinney-Vento Homeless Education Assistance Act federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Region 10 ESC reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFA does not obligate Region 10 ESC to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the Request For Application ESCR-10/H2015-17 may be downloaded from the Texas Homeless Education Office website at http://www.utdanacenter.org/theo. The application may also be obtained by sending an email to Barbara Wand James at babawawa@austin.utexas.edu or by calling 1-800-446-3142 or (512) 475-9702 (in Austin). Please refer to RFA #ESCR-10/H2015-17 in your request. Only electronic copies will be provided to anyone requesting copies of the RFA.

Two versions of the application will be available on the website: 1) for single-district applicants and 2) for education service centers and multiple-district applicants who are submitting a shared services arrangement application.

Further Information. For clarifying information about the RFA, contact the Texas Homeless Education Office at 1-800-446-3142 or (512) 475-9702.

Bidder's Webinar. Region 10 is holding a bidder's webinar for those interested in additional information about this RFA on October 9, 2014. There will be two webinars: 1) for single-district applicants from 10:00 a.m. until 11:30 a.m., and 2) for education service centers and other multiple-district applicants who are submitting a shared services arrangements application from 1:30 p.m. until 3:00 p.m. There is no fee to participate in this webinar, however, attendees assume all costs incurred for their participation in this webinar, such as internet costs and long-distance calling costs. Should applicants be awarded a subgrant under this program, their costs to participate in this bidder's conference may not be charged to the subgrant. Registration for the webinar is required; specific registration instructions, technology requirements, and other related information can be found at the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the TEXSHEP ESCR-10/H2015-17 section of the website. This bidder's webinar will be recorded and archived; those unable to attend may review the proceedings at the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the TEXSHEP ESCR-10/H2015-17 section of the website. Questions regarding the bidder's webinar or the TEXSHEP subgrant may be

directed to Barbara James at 1-800-446-3142 or (512) 475-8765, or by email at babawawa@austin.utexas.edu. Responses to all questions about the subgrant will be posted on the Texas Homeless Education Office website at http://www.utdanacenter.org/theo under the TEXSHEP ESCR-10/H2015-17 section of the website.

Deadline for Receipt of Application. Applications must be submitted electronically and must be received by the Region 10 ESC business office by 3:30 p.m. (Central Standard Time), Thursday, December 11, 2014, to be considered for approval.

TRD-201404432
Wilburn O. Echols, Jr.
Executive Director
Education Service Center Region 10
Filed: September 17, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 27, 2014.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 27, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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: ALINA ENTERPRISES, INCORPORATED dba King Grocery; DOCKET NUMBER: 2014-0777-PST-E; IDENTIFIER: RN101434223; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: $3,011; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Balcones Minerals Corporation; DOCKET NUMBER: 2014-1270-WQ-E; IDENTIFIER: RN100719152; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: absorbent clays manufacturer; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (storm water); PENALTY: $875; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Binal Patel dba Stop N Shop; DOCKET NUMBER: 2014-0988-PST-E; IDENTIFIER: RN101634988; LOCATION: Giddings, Lee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST system; PENALTY: $5,954; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2014-0803-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §106.6(b) and §122.143(4), Permit by Rule Registration Number 93791, Federal Operating Permit Number O1513, General Terms and Conditions, Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to comply with the certified volatile organic compound emission rate for Tank F-1115; PENALTY: $14,513; Supplemental Environmental Project offset amount of $5,805 applied to Anahuac Independent School District; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Bonham; DOCKET NUMBER: 2014-0280-MWD-E; IDENTIFIER: RN101919850; LOCATION: Bonham, Fannin County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), (4), and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010070001, Effluent Limitations and Monitoring Requirements Numbers 1 and 4, Permit Conditions Number 2.d, and Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, failed to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment, and failed to comply with permitted effluent limits; and 40 Code of Federal Regulations §136.7 and 30 TAC §§319.6, 319.9(d), and 319.11(e), and TPDES Permit Number WQ0010070001, Monitoring and Reporting Requirements Number 2.a, by failing to comply with quality assurance requirements for wastewater analyses; PENALTY: $67,873; Supplemental Environmental Project offset amount of $67,873 applied to Wastewater Treatment Plant Improvement Project; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Eastwood Hills Mobile Home Park Limited Partnership; DOCKET NUMBER: 2014-0700-MWD-E; IDENTIFIER: RN102183480; LOCATION: Conroe, Montgomery County; TYPE

OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.16(c) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014979001, Operational Requirements Number 1, by failing to maintain a current operations and maintenance manual at the facility; 30 TAC §217.330, by failing to properly maintain the reduced-pressure principal backflow prevention assembly; 30 TAC §305.125(1) and (5), TPDES Permit Number WQ0014979001, Operational Requirements Number 1, by failing to ensure at all times that the facility and its systems of collection, treatment, and disposal are properly operated and maintained; and TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0014979001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $10,475; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: EOG Resources, Incorporated; DOCKET NUMBER: 2014-0801-WQ-E; IDENTIFIER: RN105295406; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25, by failing to register the site as an APO by October 26, 2013; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2014-0897-AIR-E; IDENTIFIER: RN100237668; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: polymer manufacturing facility; RULES VIOLATED: 30 TAC §122.121 and §122.142(b)(2)(A) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to include all applicable requirements for each emissions unit in a Federal Operating Permit (FOP) and by failing to authorize an emissions unit under a FOP; PENALTY: $4,040; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: FOREST WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0885-PWS-E; IDENTIFIER: RN101183465; LOCATION: Cherokee, Cherokee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: $685; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: IHU Incorporated dba Eldridge Shell; DOCKET NUMBER: 2014-0780-PST-E; IDENTIFIER: RN102008315; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; and 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line; PENALTY: $9,563; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Jimmy Perez Flores; DOCKET NUMBER: 2014-0669-OSI-E; IDENTIFIER: RN107365322; LOCATION: City of Voca, McCullough County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §30.5(a) and §285.50(b), Texas Health and Safety Code (THSC), §366.071(a), and TWC, §37.003, by failing to hold an OSSF installer license prior to installing an OSSF; and 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain documentation of authorization to construct prior to beginning construction of an OSSF; PENALTY: $1,021; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: JYKM UNION, INCORPORATED dba Liberty Hill Food Mart; DOCKET NUMBER: 2014-0773-PST-E; IDENTIFIER: RN101432177; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $3,979; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: Maverick Drilling & Exploration USA, Incorporated; DOCKET NUMBER: 2013-1786-AIR-E; IDENTIFIER: RN106755267 (Site 1) and RN106741770 (Site 2); LOCATION: Missouri City, Fort Bend County (Site 1); Houston, Fort Bend County (Site 2); TYPE OF FACILITY: oil and gas production; RULES VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an Emissions Inventory for calendar years 2010 (Site 1), 2011 (Site 1 and Site 2), and 2012 (Site 1 and Site 2); 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation (Site 1 and Site 2); and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit (Site 1 and Site 2); PENALTY: $208,622; Supplemental Environmental Project offset amount of $83,449 applied to Railroad Commission of Texas; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Oak Manor Municipal Utility District; DOCKET NUMBER: 2014-0789-PWS-E; IDENTIFIER: RN101186526; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Ravindra Bhakta; DOCKET NUMBER: 2014-0518-MWD-E; IDENTIFIER: RN101528974; LOCATION: Kingwood, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §309.13(e)(3) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015017001, Other Requirements Number 6, by failing to submit evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee; and 30 TAC §217.33(c)(4)(A) and §305.125(1) and TPDES Permit Number WQ0015017001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment and disposal are properly operated and maintained; PENALTY: $2,500; ENFORCEMENT COORDINATOR:

Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Roxann Garvin dba Garvin Dairy; DOCKET NUMBER: 2014-0768-AGR-E; IDENTIFIER: RN104336565; LOCATION: Winnsboro, Hopkins County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §321.36(c) and §321.37(d) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920619 Part III.A.6.(d)(1)(ii), by failing to design, construct, operate and maintain a retention control structure to contain manure, litter and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour rainfall; and 30 TAC §321.36(l) and TPDES General Permit Number TXG920619 Part III.A.10.(c), by failing to collect carcasses within 24 hours of death and properly dispose of them within three days after death; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: West Texas Paving Incorporated; DOCKET NUMBER: 2014-1271-WQ-E; IDENTIFIER: RN107598591; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: hot mix plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (storm water); PENALTY: $875; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201404425
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2014

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 27, 2014.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 27, 2014.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Eric Martinez d/b/a Xtreme Customs; DOCKET NUMBER: 2013-1905-AIR-E; TCEQ ID NUMBER: RN106657463; LOCATION: 4524 Dyer Street, El Paso, El Paso County; TYPE OF FACILITY: auto body refinishing shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing and operating an auto body refinishing shop; PENALTY: $1,312; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: JDN Mobile Inc d/b/a Quickstar Manor; DOCKET NUMBER: 2013-1727-PST-E; TCEQ ID NUMBER: RN102282225; LOCATION: 10400 United States Highway 290 East, Manor, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $3,375; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400.

(3) COMPANY: Maynard J. Haddad and Kenneth J. Haddad d/b/a H & H Car Wash and Coffee Shop; DOCKET NUMBER: 2014-0334-PST-E; TCEQ ID NUMBER: RN100961473; LOCATION: 701 East Yandell Drive, El Paso, El Paso County; TYPE OF FACILITY: underground storage tank system and a restaurant and car wash with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $4,103; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: P. Lura LLC d/b/a Bedford Food Mart; DOCKET NUMBER: 2013-1760-PST-E; TCEQ ID NUMBER: RN102356144; LOCATION: 2829 Brown Trail, Bedford, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201404414
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2014

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent 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. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 27, 2014.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 27, 2014.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bennie Joe Byley and Virginia Lynn Galloway; DOCKET NUMBER: 2013-1030-MLM-E; TCEQ ID NUMBER: RN106531742; LOCATION: 11906 Schaefer Road, Schertz, Bexar County; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §26.121 and 30 TAC §330.7(a) and §335.2(a), by failing to prevent the unauthorized storage and/or disposal and unauthorized discharge of solid waste into or adjacent to water in the state; PENALTY: $7,875; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Dustin Lynch; DOCKET NUMBER: 2014-0298-MSW-E; TCEQ ID NUMBER: RN105978670; LOCATION: 6203 Farm-to-Market Road 1122, Silsbee, Hardin County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a) and (c), by failing to prevent the unauthorized disposal and/or storage of MSW; PENALTY: $1,312; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: John Roberts; DOCKET NUMBER: 2013-1434-MSW-E; TCEQ ID NUMBER: RN106779572; LOCATION: 0.2 miles north of the intersection of State Highway 186 (East Hidalgo Road) and United States Highway (US) 77 on the northbound frontage road of US 77, Raymondville, Willacy County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal and/or storage of MSW; PENALTY: $11,250; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Ms. Molly's LLC; DOCKET NUMBER: 2013-2066-PWS-E; TCEQ ID NUMBER: RN104909882; LOCATION: 1005 County Road 107, Columbus, Colorado County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e) and TCEQ Docket Number 2012-0915-PWS-E, Ordering Provisions Numbers 2.a.i. and ii., by failing to ensure that all delinquent drinking water chemical monitoring reports were submitted to the executive director and by failing to implement improvements to the facility's process procedures, guidance, training and/or oversight to ensure that future drinking water chemical sample results are released by the facility's laboratories and reported to the executive director; Texas Health and Safety Code, §341.033 (d), 30 TAC §§290.109(c)(2)(A)(i), 290.122(c)(2)(A) and (B), and 290.122(f), and TCEQ Agreed Order Docket Number 2011-0764-PWS-E, Ordering Provisions Numbers 2.a.i. and ii., by failing to collect routine distribution samples for coliform analysis and by failing to provide public notification, and proof of such public notification to the TCEQ, of the failure to collect routine samples; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees; PENALTY: $5,484; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Taufiq Ahmed; DOCKET NUMBER: 2013-0995-DCL-E; TCEQ ID NUMBERS: RN104059241 (Facility 1), RN104963939 (Facility 2), RN105495469 (Facility 3), and RN100714526 (Facility 4); LOCATION: 109 West Harwood Road, Euless (Facility 1), 3204 Camp Bowie Boulevard, Suite C (Facility 2), 2977 South Precinct Line Road (Facility 3), 8808 Camp Bowie West Boulevard, Suite 160 (Facility 4) Fort Worth, Tarrant County TYPE OF FACILITY: dry cleaning facility and three dry cleaning drop stations; RULES VIOLATED: Texas Health and Safety Code, §374.102 and 30 TAC §337.11(e), by failing to renew the facilities' registrations by completing and submitting the required registrations to the TCEQ for a dry cleaning and /or drop station facility; PENALTY: $8,699; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201404415
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2014

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 305

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 305, Consolidated Permits, §305.541, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would amend §305.541 to adopt by reference revisions to 40 Code of Federal Regulations Part 450 as published on March 6, 2014, in the *Federal Register* (79 FedReg 12661 - 12667).

The commission will hold a public hearing on this proposal in Austin on October 23, 2014, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2014-020-305-OW. The comment period closes October 27, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Laurie Fleet, Wastewater Permitting Section, (512) 239-5445.

TRD-201404376
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 12, 2014

Notice of Water Quality Applications

The following notices were issued on September 5, 2014 through September 12, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF GOREE has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010102001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. The facility is located on the east side of U.S. Highway 277, approximately 1/2 mile east of the intersection of U.S. Highway 277 and State Highway 266 in Knox County, Texas 76363.

DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD which operates Dallas Fort Worth International Airport, has applied for a major amendment to TPDES Permit No. WQ0001441000 authorize the removal of permitted stormwater Outfalls 014 and 025; the removal of pH, biomonitoring, aluminum, copper, and zinc monitoring requirements for Outfalls 014, 019, 020, 023, 025, and 059; to reclassify DFW Airport's Pretreatment Plant as a Stormwater Pretreatment Facility; and to clarify the definition of a deicing event discharge. The current permit authorizes the discharge of first flush stormwater and other stormwater on an intermittent and flow-variable basis via Outfall 001 and other stormwater on an intermittent and flow-variable basis via from Outfalls 014, 019, 020, 023, 025, and 059. The facility is located at 3200 East Airfield Drive, in the northeast corner of Tarrant County and the northwest corner of Dallas County. It is bordered by State Highways 114 to the north, 161 to the east, 183 to the south, and 360 to the west, approximately three miles southeast of Lake Grapevine in Tarrant and Dallas Counties, Texas 75261 and 75063.

K-3 RESOURCES LP has applied for a renewal of TPDES Sludge Permit No. WQ0003893000 (EPA I.D. No. TXL005010) to authorize the storage and treatment of liquid municipal wastewater treatment plant sludge from multiple sources. The sewage sludge processing facility consists of above ground steel storage tanks with a total capacity of 233,000 gallons. The facility will store and treat liquid sewage sludge with lime. Lime stabilized sewage sludge will be sent to Texas Commission on Environmental Quality (TCEQ) permitted or registered beneficial use land application sites or hauled by trucks to a TCEQ permitted landfill. This permit will not authorize a discharge of pollutants into waters in the State. The sludge processing facility is located approximately 0.9 mile southwest of the intersection of Farm-to-Market Road 362 and Farm-to-Market Road 529, approximately 8 miles north of the City of Brookshire, in Waller County, Texas 77423.

MAVERICK COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 which operates Eagle Pass Power Station, a hydroelectric power generation plant, has applied for a renewal of TPDES Permit No. WQ0004149000, which authorizes the discharge of noncontact cooling water and previously monitored effluent (turbine leakage) at a daily maximum dry weather flow not to exceed 116,000 gallons per day via Outfall 001, and turbine leakage at a daily maximum flow not to exceed 28,800 gallons per day via Outfall 101. The facility is located at 264 Power Plant Road, between the Maverick County Canal and the Rio Grande at the end of Farm-to-Market Road 1907, approximately 1.75 miles southwest of the intersection of U.S. Highway 277 and Farm-to-Market Road 1907, 13.5 miles northwest of the City of Eagle Pass, Maverick County, Texas 78852.

SHINTECH INCORPORATED which operates the Shintech Freeport Plant, a facility which produces polyvinyl chloride resins, has applied for a renewal of, and major amendment to, TPDES Permit No. WQ0004818000 to authorize an increase of the daily average discharge via Outfall 004 to 1,100,000 gallons per day and an increase of the daily maximum effluent limitation for chemical oxygen demand at Outfall 005 to 200 mg/L. The existing permit authorizes the discharge of treated process wastewater, domestic wastewater, utility wastewater, steam condensate, leachate (from a solid waste management unit), and stormwater at a daily average flow not to exceed 1,110,000 gallons per day via Outfall 001; treated process wastewater, domestic wastewater, utility wastewater, steam condensate, leachate (from a solid waste management unit), and stormwater at a daily average flow not to exceed 970,000 gallons per day via Outfall 004; treated process wastewater, domestic wastewater, utility wastewater, steam condensate, leachate (from a solid waste management unit), and stormwater at a daily average flow not to exceed 1,060,000 gallons per day via Outfall 006; and stormwater, steam condensate, and de minimus quantities of utility wastewaters on an intermittent and flow-variable basis via Outfalls 002, 003, 005, 007, and 008. The facility is located at 5618 East Highway 332, approximately 1.5 miles northwest of the intersection of State Highway 332 and Farm-to-Market Road 523, and approximately 2.0 miles north of the City of Freeport, Brazoria County, Texas 77541. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the

General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

GREENS PORT CBR LLC AND WATCO DOCK & RAIL LLC which operate Greens Port Crude by Rail Terminal, have applied for new TPDES Permit No. WQ0005113000 to authorize the discharge of boiler blowdown and potentially-contaminated stormwater at an intermittent and flow-variable rate via Outfall 001. The facility will be located at 13609 Industrial Road, Harris County, Texas 77015.

CITY OF CLEBURNE has applied for a major amendment to TPDES Permit No. WQ0010006001 to authorize the addition of new Outfall 003, elimination of cyanide limits, an extension of the temporary variance for Total Dissolved Solids, Chloride and Sulfate and the discharge of treated domestic wastewater from Outfall 001 at an annual average flow not to exceed 7,500,000 gallons per day; from Outfall 002 at an annual average flow not to exceed 300,000 gallons per day and from Outfall 003 at an annual average flow not to exceed 6,000,000 gallons per day. The draft permit authorizes a combined annual average flow not to exceed 7,500,000 gallons per day from Outfall 001, 002 and 003. The facility is located at 1801 Park Boulevard, on the north side of Buffalo Creek, approximately 1 mile southwest of the intersection of State Highway 174 and State Highway 171 in Johnson County, Texas 76033.

CITY OF EDEN has applied for a renewal of TPDES Permit No. WQ0010081001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 440,000 gallons per day. The facility is located approximately 2/3 of a mile east of U.S. Highway 83, 2/3 of a mile south of U.S. Highway 87 and immediately north of Harden Branch, in the City of Eden, in Concho County, Texas 76837.

CITY OF FALLS CITY has applied for a renewal of TPDES Permit No. WQ0010398001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 26 acres non-public access agricultural land. The facility is located approximately 600 feet northwest of the intersection of Panna Maria Street and Maverick Street in the City of Falls City in Karnes County, Texas 78113.

CITY OF AUSTIN has applied for a renewal of TPDES Permit No. WQ0010543011 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 75,000,000 gallons per day. The facility is located at 7113 Farm-to-Market Road 969, Austin in Travis County, Texas 78724.

CITY OF PLEASANTON has applied for a renewal of TPDES Permit No. WQ0010598001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,420,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 4.0 acres of lawn at the plant site. The applicant also included a request for a temporary variance to the public water supply designation for the receiving water. In the update to the 2014 Texas Surface Water Quality Standards (Standards), the TCEQ recommended reclassification of the portion of the Atascosa River that runs through the City of Pleasanton, from the confluence with Galvan Creek upstream to the confluence with Palo Alto Creek, as an intermittent stream with perennial pools. If EPA approves the reclassification, the public water supply designation will not apply to this portion of the Atascosa River. The 2014 Standards, were adopted by the TCEQ on February 12, 2014, and are pending EPA approval. The variance would authorize a three-year period to allow for EPA's review of the updates to the Standards. The facility is located at 550 East Hunt Street, Pleasanton in Atascosa County, Texas 78064.

CITY OF SILVERTON has applied for a renewal of TCEQ Permit No. WQ0010803001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day via evaporation on approximately 36 acres of playa lake and via surface irrigation of 70 acres of non-public access native grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.75 mile west of State Highway 207 and 1 mile south of State Highway 86 in Briscoe County, Texas 79257.

CITY OF MEADOWLAKES has applied for a renewal of TCEQ Permit No. WQ0011439001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 102.0 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The domestic wastewater treatment facility and disposal area are located southwest of the City of Marble Falls and north of Lake Marble Falls, approximately one block south of the intersection of South 4th Street and Avenue R in Burnet County, Texas 78654.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 216 has applied for a renewal of TPDES Permit No. WQ0012682001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located adjacent to and south of the feeder road for Interstate Highway 10, approximately 0.6 mile east of Barker Cypress Road and approximately 2.0 miles west of State Highway 6 in Harris County, Texas 77094.

RANKIN ROAD WEST MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012934001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 12739 Laurel Vale Way, approximately 5,300 feet northeast of the intersection of Spears Road and Walter Road in Harris County, Texas 77014.

CITY OF O'BRIEN has applied for a renewal of TPDES Permit No. WQ0013616001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater effluent via irrigation of 7.1 acres of non-public access agricultural land. The facility is located approximately 0.8 mile north of the intersection of State Highway 6 and Farm-to-Market Road 2229, north of the City of O'Brien on the west side of State Highway 6 in Haskell County, Texas 79539.

AUC GROUP LP a wastewater treatment facility manufacturer, has applied for a renewal of TPDES Permit No. WQ0014724003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility will be located approximately 8,000 feet southeast of the intersection of State Highway 288 and County Road 57 on the east side of the West Fork of Chocolate Bayou in Brazoria County, Texas 77583.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 30 has applied for a new permit, Permit No. WQ0015233001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located on Beechnut Street, approximately 4,100 feet west of the intersection of Beechnut Street and Farm-to-Market Road 1464, in Richmond in Fort Bend County, Texas 77407.

FORESTER ESTATES LLC has applied for a new permit, TPDES Permit No. WQ0015237001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013865001 which expired September 1, 2013. The facility is located at 18810 Treetop Lane, Pearland in Brazoria County, Texas 77584.

CIRCLE 7 DAIRY LLC AND GRAND CANYON DAIRY LLC for a Major Amendment of TPDES Permit No. WQ0002950000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 1,950 head to a maximum capacity of 2,150 head, of which 1,950 head are milking cows, add new irrigation wells, reconfigure land management units, and increase the acreage for land application from 691 acres to 942 acres. The facility is located on the east side of Farm-to-Market Road 219, approximately 5 miles south of the intersection of Farm-to-Market Road 219 and Highway 1702, approximately 7 miles southwest of Dublin, in Erath County, Texas.

RANDY EARL WYLY AND HILLSIDE DAIRY LLC for a Major Amendment of TPDES Permit No. WQ0003160000, for a CAFO, to authorize the applicant to reconfigure the drainage area to account for actual surface acres of the retention control structures #1 and #2, and reduce the total land application area from 504 acres to 411 acres. The currently authorized maximum capacity of 3,000 head, of which 3,000 head are milking cows, remains unchanged. The facility is located on the west side of County Road 209, approximately 1.5 miles south of the intersection of County Road 209 and U.S. Highway 67, and approximately 7 miles southeast of Stephenville in Erath County, Texas.

PITCHFORK FARMS LLC for a New TPDES Permit No. WQ0005117000, for a CAFO, to authorize the applicant to operate a previously authorized CAFO as a dairy cattle facility at a maximum capacity of 2,000 head, of which 1,600 head are milking cows. The CAFO site was authorized as a dairy facility under the expired Registration No. WQ0003061000. The facility is located at 1860 County Road 241, Dublin, in Erath County, Texas 76446.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012939001 issued to Harris County Water Control and Improvement District No. 89 to authorize the change in effluent monitoring requirement from biochemical oxygen demand to carbonaceous biochemical oxygen demand. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4055 Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas 77047.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201404426
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 17, 2014

Texas Superfund Registry 2014

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published on January 16, 1987, in the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. James Barr Facility. Located in the 3300 block of Industrial Drive, in the southern part of Pearland, Brazoria County: vacuum truck waste storage.

3. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

4. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

5. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.

6. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

7. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

8. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

9. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

10. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

11. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

12. American Zinc. Located approximately 3.5 miles north of Dumas on United States 287 and 5 miles east of Dumas on Farm Road 119: zinc smelter.

13. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.

14. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

15. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

16. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

17. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

18. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

19. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

20. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

21. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

22. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

23. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

24. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

2. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.

3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: cottonseed delinting, processing.

4. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.

5. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

8. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

9. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

10. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

11. EmChem Corporation. Located at 4308 Rice Dryer Road, Pearland, Brazoria County, Texas: glycol distillation.

12. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Avinger Development Company (ADCO). Located on the south side of Texas State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

14. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

15. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

16. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

17. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

18. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

19. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

20. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

21. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

22. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

23. Woodward Industries, Inc. Located on County Road 816, about six miles north of the city of Nacogdoches in Nacogdoches County: wood treatment.

Since the last *Texas Register* publication on September 27, 2013 (38 TexReg 6728), one additional site, EmChem Corporation, was proposed to the state Superfund registry.

Also, the commission has deleted the San Angelo Electric Service Company (SESCO) site from the state Superfund program due to its acceptance into the TCEQ Voluntary Cleanup Program.

To date, 51 sites have been deleted from the state Superfund registry in accordance with THSC, §361.189 (see also 30 TAC §335.344):

Aluminum Finishing Company, Harris County; Archem Company/Thames Chelsea, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes

County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; J.C. Pennco Waste Oil Service, Bexar County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Niagara Chemical, Cameron County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; SESCO, Tom Green County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-1850 or e-mail *cfrreq@tceq.texas.gov.* CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the Central File Room. Also, inquiries concerning the agency Superfund program records may be directed to Superfund staff at the Superfund toll free line (800) 633-9363 or e-mail *superfnd@tceq.texas.gov.* Parking for mobility impaired persons is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files; however, copying of file information is subject to payment of a fee.

TRD-201404412
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 16, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Personal Financial Statement due June 30, 2014

Laura G. Maczka, 301 Overcreek, Richardson, Texas 75080

Deadline: Semiannual Report due July 15, 2014 for Candidates and Officeholders

Nathan G. Macias, 31540 Smithson Valley Road, Bulverde, Texas 78163

TRD-201404418
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: September 16, 2014

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Texas Facilities Commission

Request for Proposals #303-6-20468

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-6-20468. TFC seeks a five (5) or ten (10) year lease of approximately 18,570 square feet of office space in Edinburg, Hidalgo County, Texas.

The deadline for questions is October 6, 2014 and the deadline for proposals is October 20, 2014 at 3:00 p.m. The award date is November 19, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=113867.*

TRD-201404438
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 17, 2014

♦ ♦ ♦

General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated May 23, 2014, by William E. Merten, Licensed State Land Surveyor, delineating the line of Mean High Water along the western shore of West Galveston Bay, same line being a portion of the littoral boundary of the Isaac F.W. Curd Survey, A-170 and the western boundary of West Galveston Bay Submerged Land Tracts 9 and 12. The survey supports the expansion of an existing shoreline protection project, consisting of breakwater construction, authorized under Texas General Land Office Lease No SL20120046. The surveyed line is comprised of two lines adjacent to and extending northerly (1500 feet) and southerly (3700 feet) from the ends of a previously surveyed shoreline (Texas Natural Resources Code, Chapter 33.136, Brazoria County Sketch 13), situated east of Oyster Lake (coordinates N 29° 07' 15", W 95° 10' 01", WGS84).

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion re-

sponse activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201404358
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 11, 2014

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated March 2013, by Michael W. Chandler, Registered Professional Land Surveyor and duly elected County Surveyor for Chambers County, delineating the line of Mean Higher High Water along the western shore of Trinity Bay Submerged Land Tracts 10-11E and 14-15E, same line, being a portion of the littoral boundary of the Solomon Barrow Survey, Abstract 3. The survey is in support of cordgrass planting and rip-rap placement along the shore, authorized under Texas General Land Office lease No. CL20130002 and situated at McCollum Park (coordinates N 29° 44' 42", W 94° 49' 40", WGS84).

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201404359
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 11, 2014

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 17, 2014, at 2:00 p.m. to receive public comment on proposed rates for hospice routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid hospice program is operated by the Texas Department of Aging and Disability Services (DADS).

The public hearing will be held in compliance with Texas Human Resources Code §32.0282, Government Code §531.021, and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard.

Proposal. The payment rates for hospice routine home, continuous home, inpatient respite, and general inpatient care are proposed to be effective October 1, 2014.

Methodology and Justification. The hospice reimbursement methodology is located at the Code of Federal Regulations, Title 42, Part 418, Subpart G.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after October 3, 2014. Interested parties also may obtain a copy of the briefing package before the hearing by contacting Michelle Mikulencak by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, 4900 North Lamar, Austin, Texas 78751-2316.

Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201404380
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: September 12, 2014

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-030 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to update the state plan's provisions regarding the prohibition against reassignment of provider claims by adding an exception for substitute physician arrangements. The amendment would clarify that no payment under the plan for any care or service provided to an individual shall be made to anyone other than the person providing such care or service, except in cases where a substitute physician sees a billing physician's patients for 14 continuous days or less under an informal reciprocal arrangement or for up to 90 continuous days under a formal locum tenens arrangement. The proposed amendment is effective July 14, 2014.

The proposed amendment is estimated to have no fiscal impact. The clarification of the State's substitute physician arrangements would align the state plan with the State's program rules without changing Medicaid fees, costs, or utilization.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100,

Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201404357
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: September 10, 2014

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for BLOCK VISION OF TEXAS, INC., a domestic health maintenance organization, DBA (doing business as) SUPERIOR VISION OF TEXAS. The home office is in Dallas, Texas.

Application to change the name of INDEPENDENCE CASUALTY AND SURETY COMPANY to VERTERRA INSURANCE COMPANY, a domestic life and/or health company. The home office is in Bellaire, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201404433
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 17, 2014

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1600 "Veterans Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1600 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1600 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1600.

A. Display Printing - That area of the Instant Game 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 Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, FLAG SYMBOL, DOUBLE DOLLAR SIGN SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $25,000.

D. Play Symbols 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. 1600 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
FLAG SYMBOL	WIN
DOUBLE DOLLAR SIGN SYMBOL	DOUBLE
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $25,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1600), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1600-0000001-001.

K. Pack - A Pack of "VETERANS CASH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VETERANS CASH" Instant Game No. 1600 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "VETERANS CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "FLAG" Play Symbol, the player wins the prize for that symbol. If a player reveals a "DOUBLE DOLLAR SIGN" Play Symbol, the player wins DOUBLE 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 Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the 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 Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and 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 Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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 Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "$$" (doubler) and "FLAG" (auto win) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "$$" (doubler) Play Symbol will appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning 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 Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Ticket. 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 "VETERANS CASH" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning 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 "VETERANS CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 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 "VETERANS CASH" Instant 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 "VETERANS CASH" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 Ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the 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 Ticket in the space designated. If more than one name appears on the back of the 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 Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 Tickets in the Instant Game No. 1600. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1600 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	524,160	9.62
$4	483,840	10.42
$5	80,640	62.50
$10	60,480	83.33
$20	40,320	125.00
$50	27,111	185.90
$100	2,100	2,400.00
$1,000	63	80,000.00
$25,000	5	1,008,000.00

*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 4.14. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1600 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1600, 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-201404439
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 17, 2014

Instant Game Number 1674 "Money! Money! Money!"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1674 is "MONEY! MONEY! MONEY!". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1674 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1674.

A. Display Printing - That area of the Instant Game 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 Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, STACK OF MONEY SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $1,000 and $25,000.

D. Play Symbols 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. 1674 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
STACK OF MONEY SYMBOL	DOUBLE
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $1,000 or $25,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1674), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1674-0000001-001.

K. Pack - A Pack of "MONEY! MONEY! MONEY!" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY! MONEY! MONEY!" Instant Game No. 1674 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MONEY! MONEY! MONEY!" Instant Game is determined once the latex on the Ticket is scratched off to expose 23 (twenty-three) Play Symbols. 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 a player reveals a "STACK OF MONEY" Play Symbol, the player wins DOUBLE 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 Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the 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 Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and 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 Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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 Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. The "STACK OF MONEY" (doubler) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "STACK OF MONEY" (doubler) Play Symbol will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never appear more than two (2) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY! MONEY! MONEY!" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning 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 Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $200 Ticket. 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 "MONEY! MONEY! MONEY!" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning 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 "MONEY! MONEY! MONEY!" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 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 "MONEY! MONEY! MONEY!" Instant 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 "MONEY! MONEY! MONEY!" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 Ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the 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 Ticket in the space designated. If more than one name appears on the back of the 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 Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 Tickets in the Instant Game No. 1674. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1674 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	875,520	10.42
$4	802,560	11.36
$5	218,880	41.67
$10	109,440	83.33
$20	72,960	125.00
$50	42,446	214.86
$200	3,800	2,400.00
$1,000	114	80,000.00
$25,000	10	912,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.29. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1674 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1674, 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-201404440
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 17, 2014

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Public Utility Commission of Texas

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 9, 2014, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of Axon Power & Gas, LLC for Retail Electric Provider Certificate, Docket Number 43067.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 24, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 43067.

TRD-201404365
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2014

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas pursuant to the Texas Water Code.

Docket Style and Number: Application of J&S Water Company, LLC and Utilities Investment Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County, Docket Number 43074.

The Application: J&S Water Company, LLC (J&S Water) and Utilities Investment Company, Inc. (UIC) filed an application for approval of the proposed purchase of the Aldine Sewer Plant and collection system, the Aldine Water Plant and distribution system, the Azalea Estates Water Plant and distribution system, the Cottonwood Water Plant and distribution system and the Cypress Hill Water and distribution system (the Facilities). UIC will assume control of all system components and distribution systems for the Facilities.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43074.

TRD-201404393
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2014

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas pursuant to the Texas Water Code.

Docket Style and Number: Application of Highland Utilities, Inc. and Wilderness Cove Water Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burnet County, Docket Number 43075.

The Application: Highland Utilities, Inc. (Highland) and Wilderness Cove Water Company, LLC (Wilderness Cove) filed an application for approval of the proposed purchase of the Wilderness Cove Water System (the Facility). Wilderness Cove will assume control of all system components and distribution systems for the Facility.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43075.

TRD-201404394
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2014

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

September 10, 2014, RigNet SatCom, Inc. (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60191. Applicant seeks to relinquish the certificate. Applicant stated a decision to operate as a private carrier for all of its interstate and intrastate services.

The Application: Application of RigNet SatCom, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 43077.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than October 3, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43077.

TRD-201404366
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2014

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 10, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Coleman County Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43084.

The Application: Coleman County Telephone Cooperative, Inc. (CCTC) filed an application with the commission for revisions to its Local Exchange Tariff. CCTC proposed an effective date of October 1, 2014. The estimated revenue increase to be recognized by the Applicant is $59,443 in gross annual intrastate revenues. The Applicant has 1,667 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 30, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 30, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43084.

TRD-201404367
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2014

Public Notice of Workshop

Staff of the Public Utility Commission of Texas (commission staff) will hold a workshop regarding Project No. 36234, *Advanced Metering System Low-Income Programs* on Thursday, October 9, 2014, at 9:30 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

This workshop is being held pursuant to the final orders in Docket No. 35718, *Oncor Electric Delivery Company LLC's Request for Approval*

of Advanced Metering System (AMS) Deployment Plan and Request for Advanced Metering System (AMS) Surcharge; Docket No. 35639, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System;* Docket No. 36928, *AEP Texas Central Company and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges;* and Docket No. 38306, *Texas-New Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment and AMS Surcharge.* The purpose of the workshop will be for the commission staff to discuss and finalize the project implementation plan.

Following the workshop, a copy of the implementation plan is expected to be filed by Friday, November 14, 2014 in the commission's Central Records in Project No. 36234.

Questions concerning the workshop or this notice should be referred to Katie Rich, (512) 936-7402 or at katie.rich@puc.texas.gov or Shelah Cisneros, (512) 936-7265 or at shelah.cisneros@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas at 7-1-1.

TRD-201404395
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2014

Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

(Editor's Note: On September 16, 2014, the Supreme Court of Texas filed Misc. Docket No. 14-9185, Final Approval of Amendments to the Rules Governing Admission to the Bar of Texas, in the Texas Register office. In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the notice is not included in the print version of the Texas Register. The *notice* *is available in the on-line version of the September 26, 2014, issue of the Texas Register.)*

Misc. Docket No. 14-9185

FINAL APPROVAL OF AMENDMENTS TO THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

ORDERED that:

1. By order dated June 9, 2014, in Misc. Docket No. 14-9113, the Supreme Court of Texas approved amendments to Rules I, II, III, XIII, XIV, XVII, and XIX of the Rules Governing Admission to the Bar of Texas and invited public comment. After the comment period expired, the Court made revisions to the rules. This order incorporates those revisions and contains the final version of the rules. The amendments are effective October 1, 2014.

2. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: September 15, 2014.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

____

Debra H. Lehrmann, Justice

____

Jeffrey S. Boyd, Justice

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John P. Devine, Justice

____

Jeffrey V. Brown, Justice

TRD-201404411
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: September 16, 2014

How to Use the Texas Register

Information Available: The 14 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.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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.

Review of Agency Rules - notices of state agency rules review.

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 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 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, Room 245, 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 ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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
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
40 TAC §3.704..950 *(P)*

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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